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

VOTER PARTICIPATION CENTER, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official capacity as the Secretary of State for the State of Georgia, *et al.*,

Defendants,

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Intervenor-Defendants.

Civil Action No.: 1:21-CV-1390-JPB

STATE DEFENDANTS' RESPONSES TO PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

RESPONSES TO PLAINTIFFS' FINDINGS OF FACT

1. Plaintiffs Voter Participation Center and Center for Voter Information filed this action on April 7, 2021, challenging three provisions (the "Initial Challenged Provisions") of Georgia Senate Bill 202 ("SB 202")—namely (1) the Prefilling Prohibition, (2) the Mailing List Restriction, and (3) the Disclaimer Provision—alleging that the Initial Challenged Provisions violated their First Amendment rights to free speech and free association and that the Provisions were unconstitutionally overbroad and impermissibly vague. *See generally* ECF No. 1.

RESPONSE: State Defendants have no response, other than to note that the Court has called what Plaintiffs refer to as "the Mailing List Restriction" the "Anti-Duplication Provision." *See, e.g.*, Order at 13 [Doc. 179].

2. State Defendants and Intervenor Defendants, respectively, filed motions to dismiss under Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1), ECF Nos. 40, 53, and the Court denied Defendants' motion on December 9, 2021, ECF No. 57.

RESPONSE: No response.

3. Plaintiffs filed a motion for preliminary injunction on April 26, 2022, ECF No. 103, and the Court denied Plaintiffs' motion on June 30, 2022, ECF No. 131.

RESPONSE: No response.

4. On June 9, 2023, the parties notified the Court that Plaintiffs' claims relating to the Disclaimer Provision were moot. ECF No. 176. Plaintiffs also advised the Court that they were no longer pursuing their vagueness claim or their argument that the Mailing List Restriction was overbroad. *See* ECF No. 179 at 3.

RESPONSE: No response.

5. Defendants filed a motion for summary judgment, ECF No. 149, which the Court denied in part and granted in part on September 27, 2023, ECF No. 179. The Court denied Defendants' motion as to Plaintiffs' free speech claim, *id.* at 29, and it granted the motion as to Plaintiffs' free association and overbreadth claims, *id.* at 36-38.

RESPONSE: No response.

6. A bench trial was held on Plaintiffs' free speech claim as to the Prefilling Prohibition and Mailing List Restriction (the "Challenged Provisions" or the "Ballot Application Restrictions") from April 15 to April 18, 2024. ECF Nos. 230-33.

RESPONSE: No response.

7. SB 202, an omnibus elections bill, was enacted in March 2021. ECF No. 185-4, Consolidated Stipulations of Fact ("Stipulated Facts") ¶ 26. It includes three provisions challenged by Plaintiffs in this case.

RESPONSE: After Plaintiffs abandoned their challenge to the Disclaimer Provision, there are only two provisions of SB 202 that Plaintiffs challenge. [Doc. 176; Doc. 179 at 2 n.4].

8. The Prefilling Prohibition is codified at section 21-2-381(a)(1)(C)(ii). It provides that "[n]o person or entity other than a relative authorized to request an absentee ballot for such elector or a person signing as assisting an illiterate or physically disabled elector shall send any elector an absentee ballot application that is prefilled with the elector's required information." O.C.G.A. § 21-2-381(a)(1)(C)(ii); see Pls. Ex. 7 at 39; Trial Tr. 4.16PM 175:15-22 (Germany). "Required information" includes the elector's name, date of birth, address as registered, address where the elector wishes the ballot to be mailed, and the number of the elector's Georgia driver's license or identification card. O.C.G.A. § 21-2-381(a)(1)(C)(i); see Pls. Ex. 7 at 38. Failure to comply with the Prefilling Prohibition could result in misdemeanor, or even felony, charges. See O.C.G.A. §§ 21-2-598 (criminal misdemeanor for "any person who violates any" part of the election code), 21-2-562(a) (felony provision for improper insertions on any election document).

RESPONSE: The trial record lacks reference to the consequences of failure to comply with the Prefilling Prohibition. But the statutes speak for themselves. The cited felony statute does not reference "improper insertions," as Plaintiffs state. Rather, it states: "Any person who willfully [] [i]nserts or

permits to be inserted any fictitious name, false figure, false statement, or other fraudulent entry on or in any … record or document … in connection with any primary or election … shall be guilty of a felony[.]" O.C.G.A. § 21-2-562(a)(1).

9. The Mailing List Restriction (referred to by Defendants as the Anti-Duplication Provision) is codified at section 21-2-381(a)(3)(A)-(B). It mandates that "[a]ll persons or entities, other than the Secretary of State, election superintendents, boards of registrars, and absentee ballot clerks, that send applications for absentee ballots to electors in a primary, election, or runoff shall mail such applications only to individuals who have not already requested, received, or voted an absentee ballot in the primary, election, or runoff." O.C.G.A. § 21-2-381(a)(3)(A)-(B); accord Pls. Ex. 7 at 41; Trial Tr. 4.16PM 175:23-176:8 (Germany). The Mailing List Restriction also includes a "safe harbor" such that "[a] person or entity shall not be liable for any violation of this subparagraph if such person or entity relied upon information made available by the Secretary of State within five business days prior to the date such applications are mailed." O.C.G.A. § 21-2-381(a)(3)(A); *accord* Pls. Ex. 7 at 42; Trial Tr. 4.16PM 176:8-15 (Germany). This safe harbor turns on the date on which the individual in question first appeared in the Secretary of State's publicly available list of individuals who have requested an absentee ballot. Trial Tr. 4.16PM 176:8-22, 177:9-14 (Germany). A person or entity who

violates this provision "shall be subject to sanctions by the State Election Board which, in addition to all other possible sanctions, may include requiring such person or entity to pay restitution to each affected county or municipality in an amount up to $100.00 per duplicate absentee ballot application that is processed by the county or municipality . . . or the actual cost incurred by the affected county or municipality for the processing of such duplicate absentee ballot applications." Pls. Ex. 7 at 42.

RESPONSE: First, State Defendants note that the Court has called what Plaintiffs refer to as "the Mailing List Restriction" the "Anti-Duplication Provision." *See, e.g.*, Order at 13 [Doc. 179]. Second, the statutes speak for themselves. Third, as shown in several of Plaintiffs' Proposed Findings of Fact (¶¶ 98–104), Plaintiffs misstate what the safe-harbor provision "turns on," erroneously claiming that the date an individual first appeared can be manipulated by counties in the system. But the date a county claims an application was processed is not the same as when an individual first appeared. Rather, "[a] person or entity shall not be liable for any violation of this subparagraph if such person or entity relied upon information made available by the Secretary of State within five business days prior to the date such applications are mailed." O.C.G.A. § 21-2-381(a)(3)(A). The safe harbor provision "protects an organization if that organization relies on absentee request data the state made available within five business days before the

organization mailed its absentee ballot applications[.]" 4/18/24 Trial Tr. 97:19–25 (Evans).

10. The Disclaimer Provision is codified at section 21-2-381(a)(1)(C)(ii)-(iii); see Pls. Ex. 7 at 40. It requires that third-party groups who distribute absentee ballot applications include language clarifying that the application is not a ballot and identifying the name and address of who distributed the application. Trial Tr. 4.16PM 254:15-20 (Germany); Pls. Ex. 7 at 40. At the time of enactment, the required disclaimer read: "This is NOT an official government publication and was NOT provided to you by any governmental entity and this is NOT a ballot. It is being distributed by [insert name and address of person, organization, or other entity distributing such document or material]." Pls. Ex. 7 at 40. However, in the 2023 legislative session, the required disclaimer language was changed. Trial Tr. 4.16PM 280:12-14 (Germany). As a result, Plaintiffs voluntarily dismissed their claim related to this provision.

RESPONSE: No response, because claims related to the Disclaimer Provision have been dismissed. *See* [Doc. 176; Doc. 179 at 2 n.4].

11. Plaintiff Voter Participation Center ("VPC") is a 501(c)(3) nonprofit organization that seeks to increase the engagement of underrepresented communities in voter registration and voter turnout. Trial Tr. 4.15AM 51:17-19, 21-22 (Lopach); Stipulated Facts ¶ 8.

RESPONSE: No response.

12. VPC's stated mission is to increase voter registration and voter turnout among underrepresented communities with a focus on people of color, young people defined as 35 and under, and unmarried women. Trial Tr. 4.15AM 52:15-19 (Lopach); Trial Tr. 4.15PM 188:17-21 (Lopach). VPC has termed these groups the New American Majority because together they create a majority of the eligible American electorate. Trial Tr. 4.15AM 53:1-2, 58:11-15 (Lopach); Pls. Ex. 69.

RESPONSE: No response.

13. Plaintiff Center for Voter Information ("CVI") is a 501(c)(4) nonprofit organization that seeks to increase the engagement of underrepresented communities in voter registration and voter turnout. Trial Tr. 4.15AM 51:17-19, 23 (Lopach); Stipulated Facts ¶ 9.

RESPONSE: No response.

14. CVI's stated mission is to register to vote and turn out to vote communities who share the values of wanting to see a representative and inclusive electorate. Trial Tr. 4.15AM 53:15-18 (Lopach); Trial Tr. 4.15PM 188:21-24, 189:3-4 (Lopach).

RESPONSE: No response.

15. Plaintiffs seek to engage underrepresented populations in the electorate, populations that tend to have difficulty engaging in elections and

therefore participate in elections at disproportionately lower rates. See Trial Tr.4.15PM 152:19-24, 186:13-187:4 (Lopach).

RESPONSE: Mr. Lopach testified that as of 2018, Plaintiffs "made a business decision to target people in the mid and low propensity voting scale[.]" 4/15/24 Trial Tr. 191:11–193:7 (Lopach). Plaintiffs presented no evidence that they target populations that tend to have difficulty engaging in elections.

16. VPC and CVI were founded in 2003. Trial Tr. 4.15AM 61:20-21 (Lopach). "VPC and CVI run the nation's largest mail-based and digital voter engagement programs, and have registered more people by mail than any other organization in the United States." Pls. Ex. 69 at 3.

RESPONSE: No response.

17. Tom Lopach is the President and CEO of the Voter Participation Center and the Center for Voter Information. Trial Tr. 4.15AM 51:10-11 (Lopach). VPC and CVI share a staff but have separate boards of directors. Trial Tr. 4.15AM 52:4, 51:24-52:1 (Lopach).

RESPONSE: No response.

18. The New American Majority is underrepresented in voter registration and turnout. Trial Tr. 4.15AM 52:22-24 (Lopach). For the 2020 election, nationally, the New American Majority turned out at a rate 14 percent lower than the non-New American Majority. *Id.* at 53:5-7 (Lopach). For the 2022 election, the New American Majority turned out nationally at a rate that

was 22 to 23 percent lower than the non-New American Majority. *Id*. at 52:25-53:4 (Lopach).

RESPONSE: No response.

19. In Georgia, the New American Majority represents 4.8 million people, or 65 percent of the state's voting eligible population. Trial Tr. 4.15AM 58:20-23 (Lopach); Pls. Ex. 69.

RESPONSE: No response.

20. This underrepresentation is because members of the New American Majority often face hurdles to engaging in American democracy. Trial Tr. 4.15AM 59:10-15 (Lopach). For example, 40 percent of the New American Majority will have moved between the last presidential election and this next presidential election. *Id*. at 59:15-17 (Lopach). These communities have lower incomes, less access to transportation, and jobs that do not allow them to take time off work to drive to an elections office to register to vote or sign up to vote by mail; and individuals may not have a printer or may not have stamps in their home. *Id*. at 59:20-60:2 (Lopach). Finally, there is a history of laws in various jurisdictions that made it harder for some members of these communities to vote. *Id*. at 60:5-7 (Lopach).

RESPONSE: In these statements, Mr. Lopach did not address Georgia voters. Additionally, the record confirms that Georgia voters have many ways

to vote: absentee-by-mail, absentee in person early voting, and in person on Election Day. *See* 4/16/24 Trial Tr. 257:2–7 (Germany).

21. VPC and CVI work to increase participation among these underrepresented communities because they believe it creates a more representative government and that American democracy is stronger when more eligible Americans are voting. Trial Tr. 4.15AM 53:8-12 (Lopach).

RESPONSE: Mr. Lopach's cited testimony "was about VPC." 4/15/24 Trial Tr. 53:8–13 (Lopach). CVI indirectly targets those who tend to vote Democratic. *See, e.g.*, 4/15/24 Trial Tr. 189:13–16, 195:10–196:2, 204:2–19 (Lopach).

22. Both Plaintiff organizations run, in tandem, high-volume direct-mail and digital outreach to register voters, to help registered voters sign up to vote by mail, and to get out voters on Election Day. Trial Tr. 4.15AM 52:5-9, 54:18-20 (Lopach). Plaintiffs started their direct mail programming before the 2004 election cycle. Trial Tr. 4.15AM 61:21-22 (Lopach).

RESPONSE: Mr. Lopach testified that the two organizations "together *and separately*" run direct mail and digital outreach and that "*[g]enerally* they are running in tandem[.]" 4/15/24 Trial Tr. 52:2–9, 54:18–20 (Lopach) (emphasis added). He also testified that "direct mail programming began in the 2004 elections" (not before). 4/15/24 Trial Tr. 61:20–22 (Lopach). There is

no evidence suggesting that Plaintiffs' direct mail campaign started in Georgia before 2018.

23. Plaintiffs use both direct mail and digital programming to reach as many people as possible. Trial Tr. 4.15AM 55:13-56:2, 60:15-17, 64:13-25 (Lopach).

RESPONSE: Rather than as many people as possible, Plaintiffs target subgroups of certain subpopulations. 4/15/24 Trial Tr. 190:24–192:21 (Lopach).

24. Plaintiffs' digital programming is comprised of advertisements on social media, and historically advertising on streaming television services. Trial Tr.4.15AM 63:25, 64:3-4 (Lopach).

RESPONSE: Mr. Lopach also testified that Plaintiffs advertise on streaming radio services. 4/15/24 Trial Tr. 63:23–64:2 (Lopach).

25. VPC spends 80 to 85 percent of its budget on direct mail programming and 15 to 20 percent of its budget on digital programming. Trial Tr. 4.15AM 61:8-13 (Lopach). CVI spends 95 percent of its budget on direct mail programming and 5 percent of its budget on digital programming. *Id.* at 61:16-17 (Lopach).

RESPONSE: No response.

26. VPC and CVI run similar direct mail programming but run separate programming under their own branding to different populations

(except in 2020 due to a technical issue that was unique to that year). Trial Tr. 4.15AM 53:21-54:15 (Lopach).

RESPONSE: No response.

27. Plaintiffs regularly communicate with state election and local officials, including in Georgia, regarding the contents of and recipient list for their direct mailings. *See* Pls. Exs. 13, 15, 18, 19, 24, 25; Trial Tr. 4.15PM 161:24-162:24, 168:9-18 (Lopach). They do so in an effort to be good partners with election administrators. Trial Tr. 4.15PM 167:1-2 (Lopach). In one instance of such engagement, Plaintiffs alerted the Secretary of State's office that the absentee ballot application on their website was outdated. Pls. Exs. 18, 19; Trial Tr. 4.15PM 167:14-168:3 (Lopach).

RESPONSE: Plaintiffs have communicated with state election officials on occasion but not "regularly." These communications often asked the State to review Plaintiffs' mailers—and once even their mailing list—during busy times in the election cycle. 4/18/24 Trial Tr. 81:6–8 (Evans). There is no evidence showing that they have communicated with county election officials. Additionally, the trial record undermines the suggestion that Plaintiffs seek to be "good partners" for election officials, as their mailers resulted in Florida election officials demanding that they "stop with the mailings or to use better data." 4/18/24 Trial Tr. 75:16–19 (Evans).

28. Plaintiffs' program cycles move from the voter registration period to encouraging their target audience to vote by mail and, then, to get out the vote. Trial Tr. 4.15AM 54:23-24, 55:7-12, 60:18-21 (Lopach). Based on respective state laws, Plaintiffs' absentee ballot application programming generally starts with one wave at the end of July and a second wave at the beginning of September in even-numbered years. Trial Tr. 4.15AM 55:13-16 (Lopach). Since SB 202's passage, Plaintiffs schedule their absentee ballot application mailings around the start of the state's 78 day ballot application window. *Id.* at 84:22-25; Trial Tr. 4.18AM 35:15-17 (Evans); Trial Tr. 4.16PM 241:15-23 (Germany).

RESPONSE: Although Plaintiffs reference only one wave of mailings "[s]ince SB 202's passage," the trial record confirms that they sent two mailings related to their vote-by-mail efforts to Georgia voters since SB 202's passage. 4/15/24 Trial Tr. 84:21–85:3 (Lopach).

29. Plaintiffs use data from the state voter file, publicly available data reflecting all registered Georgia voters, for its absentee voting mailings. Trial Tr.4.16AM 5:3-12 (Lopach).

RESPONSE: Though Georgia makes such data publicly available, Plaintiffs instead obtain mailing-list data from vendors. Plaintiffs' vendors have included data that went beyond the state's voter file data. *See* 4/15/24 Trial Tr. 219:13–24 (Lopach). Even after Mr. Lopach "demand[ed]" that a

vendor "not change voter file data from mailings in which [they were] using the voter file as the base of the mailing," some Georgia voters still complained about Plaintiffs' incorrect mailings. 4/15/24 Trial Tr. 222:11–223:25 (Lopach).

30. VPC and CVI focus on direct mail because it is an effective way to communicate their message and communicate with the people they aim to serve. Trial Tr. 4.15AM 62:23-63:1 (Lopach). Direct mail can be addressed specifically to an individual, which enables Plaintiffs to select the individuals they want to communicate with and share a specific message tailored to that individual. *Id.* at 63:11-14 (Lopach). Direct mail also allows Plaintiffs to measure and test the results and effectiveness of different messages. *Id.* at 63:2-4 (Lopach).

RESPONSE: Plaintiffs did not provide any evidence to support their speculation that direct mail is effective. Rather, Mr. Lopach testified "that a one percent response rate to direct mail was considered successful." 4/15/24 Trial Tr. 62:11–13 (Lopach).

31. Plaintiffs structure their programs and mailing lists with the goal of increasing the percent and actual numbers among the New American Majority who are participating in elections. Trial Tr. 4.16AM 4:14-21 (Lopach).

RESPONSE: No response.

32. Plaintiffs' absentee voting programming is important to furthering their mission because it is an effective tool to help underrepresented

populations by providing these populations the materials they need to request an absentee ballot. Trial Tr. 4.15AM 65:23-67:2, 69:4-7, 75:5-8 (Lopach); Pls. Exs. 36 & 66; *infra* 229-241.

RESPONSE: Georgia voters may obtain absentee-ballot applications from several sources, including the Secretary of State's website and local elections offices. 4/18/24 Trial Tr. 81:16–24 (Evans).

33. Plaintiffs believe that direct mail is the most effective form of communicating their message, and the Court credits Plaintiffs' testimony in this regard.

RESPONSE: There is no evidence in the trial record to support this statement, and thus the Court should not reach this conclusion.

34. The Georgia Secretary of State is designated as the chief elections officer under the National Voter Registration Act ("NVRA"). Trial Tr. 4.16PM 234:5-8 (Germany); Stipulated Facts ¶ 3. The Secretary of State's Office is charged with maintaining Georgia's statewide voter registration system pursuant to the NVRA. Trial Tr. 4.16PM 234:10-13 (Germany). As part of this responsibility, the Secretary of State's Office maintains a voter file, which contains the records for all registered voters in the state. Trial Tr. 4.16PM 177:6-8 (Germany). The Secretary of State's Office also maintains the absentee voter file for each election, which is pulled from the voter file and

contains voters who have requested an absentee ballot or voted early. *Id.* at 177:9-17 (Germany).

RESPONSE: Counties provide data for the voter file and absentee voter file. *See* Resp. to Pls.' Proposed FOF ¶ 49. Also, with respect to the last sentence, requesting an absentee ballot and voting early are equal. Those who wish to vote by mail must request an absentee ballot, just as those who wish to vote early in person must request an absentee ballot at their advance voting location. *See* 4/16/24 Trial Tr. 177:9–14 (Germany).

35. The Georgia Secretary of State's Office includes an Elections Division, Investigations Division, Corporations Division, Securities Division, and Licensing Division. Trial Tr. 4.16PM 165:18-20 (Germany).

RESPONSE: No response.

36. The Elections Division carries out statutory duties for overseeing elections in Georgia, works with the counties who administer the elections, and provides staffing for the State Elections Board. Trial Tr. 4.16PM 165:22-166:2 (Germany).

RESPONSE: No response.

37. The Elections Division is responsible for providing the counties with guidance on the implementation of state and federal election laws and regulations. Trial Tr. 4.18AM 15:11-14 (Evans). It employs county liaisons, who are assigned to a specific set of counties and serve as the Elections

Division's primary point of contact with their assigned counties, answering questions from the counties and escalating inquiries as needed. *Id.* at 9:22-10:5 (Evans). Inquiries are escalated to the deputy general counsel assigned to the Elections Division, the liaison's direct manager, or the systems manager. *Id.* at 10:7-12 (Evans).

RESPONSE: No response.

38. Since July 2021, Blake Evans has served as the Elections Director for the Georgia Secretary of State's Office. Trial Tr. 4.18AM 8:22-9:1 (Evans).

RESPONSE: No response.

39. Mr. Evans testified that his office seeks to accomplish high voter turnout, which indicates that Georgians care about elections in the state, that people are able to participate in the election process, and that people are able to express their voice through voting. Trial Tr. 4.18AM 12:18-13:9 (Evans).

RESPONSE: Mr. Evans testified that "the goal is to provide the opportunity for all eligible Georgia voters to vote. And I think, generally, campaigns are the main drivers of turnout." 4/18/24 Trial Tr. 11:24–12:1 (Evans). Mr. Evans further stated: "'[F]or the elections division, yeah, we want to see high turnout.'" 4/18/24 Trial Tr. 12:18–22 (Evans) (quoting Evans Dep. Tr. 136:1–4).

40. The Investigations Division is the Secretary of State's law enforcement arm whose officers, among other duties, investigate complaints of

election irregularities or fraud, or violations of election law. Trial Tr. 4.16PM 166:17-22 (Germany).

RESPONSE: Ms. Watson elaborated that the Investigations Division "contains civilian inspectors and sworn investigators. [It] provide[s] complaint follow-ups for over 140 professional licensing boards to the corporations, charities, [and] security divisions, as well as the elections division." 4/17/24 Trial Tr. 12:14–20 (Watson).

41. The Investigations Division is run by the Chief Investigator, who, among other things, responds to complaints and reviews and prepares elections cases for presentation to the State Election Board. Trial Tr. 4.17AM 13:4-14 (Watson).

RESPONSE: Ms. Watson's testimony elaborated on her role as Chief Investigator, which included ensuring that the Division was "within our budget, and that we had the resources that we needed to be able to accomplish our duties. And that we were completing our duties in a timely way with the resources that we had available. And if there were any problems or issues that popped up, we would deal with those. Hiring, personnel issues. Daily administration. Responding to complaints. And the main focus on the chief investigator is working with the elections cases and reviewing the elections cases and preparing those for presentation to the State Election Board." 4/17/24 Trial Tr. 13:2–14 (Watson).

42. During the 2020 election cycle and through November 2021, Frances Watson was the Chief Investigator for the Investigations Division. Trial Tr. 4.17AM 12:4-7, 67:19-21 (Watson).

RESPONSE: No response.

43. The Secretary of State's Office also employs a General Counsel who works with the divisions of the Secretary of State on legal matters, including operational, contracts, litigation, complaints, and investigations issues, as well as with the Attorney General's Office and outside attorneys. Trial Tr. 4.16PM 165:7-14 (Germany).

RESPONSE: In addition, the General Counsel also worked with legislators and the press on matters related to elections, including addressing legislators' concerns that they had heard from constituents or the media. 4/16/24 Trial Tr. 173:4–174:11 (Germany).

44. During the 2020 election and 2021 legislative session, Ryan Germany was the General Counsel for the Secretary of State. In this role, Mr. Germany interacted with the Elections Director and Investigations Division on an "essentially [] daily basis." Trial Tr. 4.16PM 166:6-9, 167:4-6 (Germany).

RESPONSE: No response.

45. Dr. Donald Green was retained as an expert witness by Plaintiffs in this case. Trial Tr. 4.16AM 74:3-5 (Green); Pls. Ex. 28. Dr. Green obtained a master's and doctorate degree in political science. Trial Tr. 4.16AM 70:13-20

(Green); Pls. Ex. 28. He has been a political science professor for over thirty years, and he is currently a professor at Columbia University. Trial Tr. 4.16AM 70:21-71:13 (Green); Pls. Ex. 28.

RESPONSE: No response.

46. The main topics of Dr. Green's academic research are "campaigns and elections," primarily "persuasion and voter mobilization as part of campaigns." Trial Tr. 4.16AM 71:16-23 (Green). In his research, he works directly with voter mobilization organizations, both to evaluate their mobilization strategies and provide recommendations for future mobilization programs. *Id.* at 73:6-15 (Green). These organizations include those that run direct mail programs, which he has observed directly. *Id.* at 73:16-20 (Green).

RESPONSE: No response.

47. Dr. Green teaches classes on voter mobilization and persuasion, has produced publications on these subjects, and has written a book on voter mobilization titled *Get Out the Vote: How to Increase Voter Turnout*. Trial Tr. 4.16AM 71:24-72:10 (Green). In connection with writing this book, Dr. Green conducted "roughly 100" experiments. *Id.* at 72:21-73:1 (Green). Dr. Green also reviews or edits works by other scholars in his field "quite regularly." *Id.* at 73:2-5 (Green).

RESPONSE: No response, other than to note that the experiments referenced above are irrelevant to the issues at trial.

48. Dr. Green was admitted as an expert witness in voting behavior, voter mobilization, and voter persuasion under Rule 702 of the Federal Rules of Civil Procedure by this Court on April 16, 2024. Trial Tr. 4.16AM 73:21-74:1 (Green). Having observed Dr. Green and his reports, the Court credits his analyses, opinion, and testimony, and grants them substantial weight.

RESPONSE: For the reasons set forth in State Defendants' Renewed Motion to Exclude the Testimony and Opinions of Plaintiffs' Expert Donald P. Green, Ph.D. ("Motion to Exclude Green") [Doc. 187], the Court should not find Green's analysis, opinions, or testimony worthy of any weight. Dr. Green's qualifications alone do not make his opinions admissible, and his opinions in this case are not based on a recognized, reliable scientific methodology.

49. The Georgia Secretary of State maintains the statewide voter registration system—a centralized computerized database housing the voter registration list also known as the "voter file"—and the counties are responsible for the data in the voter file. Trial Tr. 4.16PM 177:2-7 (Germany); Trial Tr. 4.18AM 15:6-9, 15:15-23 (Evans). The voter file contains data on all registered voters in Georgia and is publicly available for purchase from the state, excluding sensitive data such as social security numbers and driver's license numbers. Trial Tr. 4.18AM 16:24-17:7 (Evans). The voter file, including the publicly available version, includes each voter's name, address, year of birth, and unique voter identification number. *Id.* at 16:24-17:21 (Evans).

RESPONSE: No response.

50. The Elections Division previously used a system called ElectioNet to house the voter file, but transitioned to a system called the Georgia Registered Voter Information System, also known as "GARVIS." Trial Tr. 4.18AM 15:24-16:23 (Evans).

RESPONSE: No response, other than to note that the correct acronym is "GARViS."

51. The Elections Division also publishes to the Secretary of State's website a list of people who have voted absentee, including those who have requested an absentee mail ballot, known as the absentee voter file. Trial Tr. 4.18AM 17:22-18:1, 18:3-5 (Evans). The absentee voter file, similar to the larger state voter file, contains each voter's name, address, and voter identification number, but also includes the date on which the voter requested an absentee ballot, whether their ballot application was accepted, the date on which the absentee ballot was issued to the voter, the date on which the voter returned the ballot, and whether the ballot was accepted. *Id.* at 18:9-19:5 (Evans).

RESPONSE: No response, other than to note that the absentee voter file is updated daily and includes everyone who will be mailed a ballot due to being in "rollover" status (*i.e.*, having previously requested absentee ballots for all elections in an election cycle). 4/18/24 Trial Tr. 35:1–3, 95:11–24 (Evans).

52. The absentee voter file contains a row for every ballot that corresponds to a voter. Trial Tr. 4.18AM 19:6-9 (Evans). Thus, if a Georgian requested an absentee ballot, a row would be created corresponding to that absentee ballot. *Id*. at 19:10-13 (Evans). If that individual decided that she no longer wanted to vote absentee and wanted to vote early in person instead, the county would cancel the original absentee ballot record and then create a new row reflecting the person's in- person ballot. *Id*. at 19:14-20 (Evans). Thus, the absentee voter file may contain multiple rows for one particular voter in certain circumstances where a requested or issued ballot has been cancelled or spoiled, and each row reflects a different ballot issued. *Id*. at 19:21-23 (Evans).

RESPONSE: No response.

53. The Elections Division has access to a non-public version of the absentee voter file, which updates instantaneously (i.e., as soon as a record or row corresponding to an absentee ballot is created by a county). Trial Tr. 4.18AM 20:3-8, 20:25-21:3 (Evans).

RESPONSE: That is the same information updated daily on the publicly available absentee-voter file. 4/18/24 Trial Tr. 97:6–18 (Evans).

54. The absentee voter file is made available to the public once the absentee ballot request window opens, approximately 78 days before Election Day. Trial Tr.4.18AM 19:24-20:2 (Evans). The publicly available version is updated nightly; this nightly update overwrites any previously existing

versions of the absentee voter file, replacing it with the most up-to-date version. *Id.* at 20:9-14 (Evans). Thus, on any given day, the public cannot access or download historical versions of the file (i.e., versions of the file older than the most recently uploaded version). *Id.* at 20:12-19 (Evans).

RESPONSE: The public would still be able to access historical versions that they had previously downloaded and saved. 4/18/24 Trial Tr. 20:15–19, 27:23–28:14, 96:9–98:18 (Evans). There is no limit to the number of times that the public can download the absentee voter file, so it can be downloaded every day at no cost. 4/18/24 Trial Tr. 95:25–96:6 (Evans).

55. To access the absentee voter file a person must choose the election year from a dropdown menu and then select the particular election. Trial Tr. 4.17PM 135:17-22 (Grimmer). Next, the person can choose a county from another dropdown menu and see the voting history of voters in that county or click submit and download a zip file which includes a statewide voter file that contains the history of voters statewide. *Id.* at 135:23-136:5 (Grimmer). This file contains a column called "application status" which can indicate when an application for an absentee ballot has been accepted. *Id.* at 138:6-8 (Grimmer). This file also lists the voter identification number for the individuals who have requested an absentee ballot or had their absentee ballot application accepted. *Id.* at 138:15-16 (Grimmer).

RESPONSE: No response.

56. In Georgia, all voters can vote absentee by mail, early in person, or in person on election day. Trial Tr. 4.18AM 29:11-22 (Evans); *see also* O.C.G.A. §§ 21-2-385(d)(1), 21-2-216(a), 21-2-381, 21-2-385. No excuse is required to vote absentee by mail. Trial Tr. 4.18AM 29:20-22 (Evans); *see also* O.C.G.A. § 21-2-380; Stipulated Facts ¶¶ 14, 21. Voters can submit absentee ballots up until the time that polls close on election day. Trial Tr. 4.18AM 29:23-25 (Evans); *see also* O.C.G.A. §§ 21-2-385(a), 21-2-382(c)(1); Stipulated Facts ¶ 22.

RESPONSE: No response.

57. To vote absentee in Georgia, voters must apply for an absentee ballot. *See* O.C.G.A. § 21-2-381. Before SB 202, voters could apply to vote absentee up to 180 days before an election. Trial Tr. 4.18AM 35:11-14 (Evans). SB 202, however, shortened that period to 78 days, with exceptions for rollover list and overseas voters. *Id.* at 35:15-17 (Evans); Trial Tr. 4.16PM 241:15-23 (Germany); Pls. Ex. 7 at 38. Applications submitted more than 78 days before an election are not held until the absentee application window opens (on the 78th day before an election) and processed at that time but are instead rejected outright. Trial Tr. 4.18AM 44:3-8 (Evans). The shortening of the application window is not challenged in this litigation. Trial Tr. 4.16PM 241:15-23 (Germany).

RESPONSE: No response.

58. Georgia has what is called a "rollover list" that allows certain eligible voters (aged 65 and over voters, disabled voters, and voters covered by the federal Uniformed and Overseas Citizens Absentee Voting Act) to sign up to vote by mail for all the elections in a particular two-year election cycle. Trial Tr. 4.15PM 144:23-145:1 (Lopach); Trial Tr. 4.16PM 178:1-6 (Germany); O.C.G.A. § 21-2-281(a)(1)(G). Voters not on the rollover list must submit a separate absentee ballot application for each election within an election cycle. Trial Tr. 4.15PM 145:4-6 (Lopach).

RESPONSE: There is not a separate "rollover list." Rather, some voters are merely in "rollover" status, meaning that they have requested absentee ballots to be mailed to them for each election in an election cycle. These voters are included in the publicly available absentee-voter file. 4/18/24 Trial Tr. 35:1–3, 95:3–15 (Evans).

59. To apply for an absentee ballot, Georgia voters can go to their county election office in person, complete the application form, and submit it in person; print a paper ballot application off the Secretary of State's website, sign it, and submit it; or receive an application in the mail, complete it, and submit it. Trial Tr.4.16PM 235:12-24, 236:1-3 (Germany); Stipulated Facts ¶ 22.

RESPONSE: To elaborate on the methods mentioned above, voters can also receive blank applications from third-party groups such as Plaintiffs or in

the mail directly from their county elections office—all without needing access to a printer. 4/18/24 Trial Tr. 81:16–24 (Evans). Location information for accessing copies of the application is made available on the Secretary of State's website. 4/18/24 Trial Tr. 81:25–82:5 (Evans). To return the application, voters can bring it to their local election office, scan and email it, or take a picture on their phone and email, or they may place it in the mail. 4/18/24 Trial Tr. 82:21–83:4 (Evans). Additionally, voters may be assisted by members of their family in obtaining, filling out, and returning an absentee-ballot application. 4/18/24 Trial Tr. 82:21–83:4, 83:10–11 (Evans).

60. The Secretary of State also has an online application portal, where voters can input their information and that information is used to prepopulate the application; the voter can then print the application, sign it, and upload it back to the portal for submission. Trial Tr. 4.18AM 30:11-18 (Evans).

RESPONSE: When asked whether the online portal prepopulates the application, Mr. Evans responded that instead, "[t]he voter will input" their information. 4/18/24 Trial Tr. 30:11–15 (Evans); *see also* 4/16/24 Trial Tr. 235:24–236:6 (Germany) (voters fill out their information which then is loaded into the request form).

61. A portal for applying to vote absentee was first used in the 2020 general election. Pls. Ex. 89. The portal was created in 2020 to "save[] voters effort and postage and increase[] voter confidence that their request has been

received by county officials," because "some voters had not been confident in their ballot request having been received when they submitted their application by mail." Trial Tr. 4.16PM 242:4-12 (Germany); Pls. Ex. 89.

RESPONSE: The absentee portal that is currently in effect "is different from the one that was in effect in 2020." 4/16/24 Trial Tr. 236:18–20 (Germany).

62. The portal in operation in 2020 was only available to individuals with a Georgia driver's license or state identification card (and only if their state identification record was associated with their voter record). Pls. Ex. 89; Trial Tr.4.16PM 237:16-18, 239:21-240:1 (Germany); Trial Tr. 4.18AM 33:19-34:17 (Evans). But because voters can opt out of linking their driver's license and voter registration records when obtaining a Georgia driver's license, not all individuals with a Georgia driver's license were able to apply for an absentee ballot via the state's portal. Trial Tr. 4.16PM 239:5-240:1 (Germany). The current version of the portal is not limited to voters whose Georgia driver's license is linked to their voter registration. Trial Tr. 4.18AM 34:8-9 (Evans).

RESPONSE: No response.

63. In 2020, the portal did not require a pen-and-ink signature in order to apply for an absentee ballot. Trial Tr. 4.16PM 237:8-11 (Germany); Trial Tr.4.18AM 33:19-34:17 (Evans). Under SB 202, however, a pen-and-ink signature is now required to apply for an absentee ballot in Georgia, meaning that even if voters submit their application either via email or through the

portal, they must obtain and sign a physical application before scanning or otherwise uploading a copy of this application to the portal or their email. Trial Tr. 4.16PM 242:20-243:3 (Germany).

RESPONSE: Voters can also take a photo of their signed application and email it to their county election office. 4/18/24 Trial Tr. 32:18–22, 82:23–83:3 (Evans).

64. Mr. Evans acknowledged that some Georgians may not have access to a working printer in their home and even those that do may experience problems printing the form. Trial Tr. 4.18AM 31:13-25 (Evans). Such individuals therefore need to find an alternative way to obtain a physical copy of the application form. *Id.* Such individuals could obtain a copy of the form at their county election office, from a friend or neighbor who has access to a printer, from a community group or organization. *Id.* at 32:2-10 (Evans).

RESPONSE: Voters can also receive blank applications from third-party groups such as Plaintiffs or in the mail directly from their county election office—all without needing a printer or to pay for printing. 4/18/24 Trial Tr. 81:16–24 (Evans). Additionally, voters may be assisted by members of their family in obtaining, filling out, and returning an absentee-ballot application. 4/18/24 Trial Tr. 82:21–83:11 (Evans).

65. Mr. Evans also acknowledged that some Georgians may not have access to a scanner, reliable Internet access, or a cellular phone capable of

taking pictures. Trial Tr. 4.18AM 32:11-33:12 (Evans). Those individuals would have to turn in their completed and signed applications by mail or in person. *Id.* at 32:18-22 (Evans).

RESPONSE: In addition, voters can be assisted by members of their family in obtaining, filling out, and returning an absentee-ballot application. 4/18/24 Trial Tr. 82:21–83:11 (Evans). These voters can also vote in person either in advance or on Election Day.

66. Mr. Evans also testified that some voters might find it helpful if someone explained to them how to complete the absentee ballot application form. Trial Tr. 4.18AM 56:2-12 (Evans).

RESPONSE: When asked whether "some voters might have difficulty determining what information they need to input into the application," Mr. Evans answered: "It's possible, but I – I don't know." 4/18/24 Trial Tr. 55:22–55:25 (Evans). Asked whether "it might be helpful … for some voters for someone to explain to them how to complete the application form," he answered: "[I]t would not shock me if a voter had a question that they would like to have answered." 4/18/24 Trial Tr. 56:2–7 (Evans). When asked whether "a letter or a mailing explaining to a voter how to complete the form could be helpful to at least some voters," he answered: "It could, but I don't know." 4/18/24 Trial Tr. 56:9–12 (Evans).

67. The Court credits Mr. Evans' testimony in this regard and grants it substantial weight.

RESPONSE: Though Mr. Evans's testimony should be granted substantial weight on the whole, this specific portion of his testimony about difficulties that voters may have should not be credited in the terms Plaintiffs have suggested. As noted above, Mr. Evans' responses were equivocal.

68. Leading up to the 2020 primary, the Secretary of State sent out prefilled absentee ballot applications to Georgia voters. Trial Tr. 4.16PM 255:17-22 (Germany); Trial Tr. 4.18AM 62:18-21 (Evans). Pls. Ex. 39 at 2-3.

RESPONSE: The Secretary of State's Office sent prefilled absentee-ballot applications for the June 2020 primary because some counties were going to send them out, which would create "a potential unlevel playing field." 4/16/24 Trial Tr. 255:23–256:3, 256:1–4 (Germany). The Secretary of State's Office also hoped "to minimize the third parties sending out applications if … everyone has already received one." 4/16/24 Trial Tr. 256:5–7 (Germany). Additionally, the Secretary of State's Office wanted "to try to help streamline the data entry phase on county election officials. The applications we sent out had a barcode that the counties could scan, and it would directly input that voter's information into the absentee ballot module in the voter registration system to try to … limit the data entry." 4/16/24 Trial Tr. 256:7–17 (Germany). All this was done because there was, unique to the COVID-19 pandemic,

"knowledge that there was going to be a … significant increase in the amount of absentee ballots. That was something we were getting calls about every day from counties and just trying to manage that," given that counties were not previously experienced in such large amounts of absentee voting. 4/16/24 Trial Tr. 256:18–257:7 (Germany).

69. Even if a voter is using a prefilled absentee ballot application form to apply to vote absentee, the voter must input their date of birth and sign their signature. Trial Tr. 4.16PM 229:17-21 (Germany). Under SB 202, individuals are also required to fill in their driver's license number or state identification number or submit another kind of acceptable form of identification. *Id.* at 229:22-25 (Germany). The Court finds that all of these actions require "some sort of conscious activity to be done by the voter." *Id.* at 230:7-9 (Germany).

RESPONSE: Plaintiffs' absentee-ballot applications (*e.g.*, Pls.' Exs. 26–27) speak for themselves. Plaintiffs would prefill the name and address information, but not other parts of the application. The record confirms that concerns were raised that these prefilled applications decreased the interactions voters have with the form. 4/16/24 Trial Tr. 210:2–213:7 (Germany).

70. Staff in the county registrar's office manually process absentee ballot applications. Trial Tr. 4.18AM 41:10-21 (Evans). Mr. Evans estimated that it takes approximately two to four minutes for county staff to process an

absentee ballot application. *Id.* at 36:23-37:1 (Evans). He further testified that, if the form is properly filled out, then processing an application is a straightforward process. *Id.* at 37:2-5 (Evans). The Court credits Mr. Evans' testimony and finds that processing the absentee ballot application is a minimum burden overall.

RESPONSE: Mr. Evans testified that, for any single application, "*if it is properly filled out*, then you're looking at two to four minutes." 4/18/24 Trial Tr. 36:23–37:1 (Evans) (emphasis added). And he testified that, for a single application, "*[i]f it's properly filled out*, then it's a pretty straightforward process." 4/18/24 Trial Tr. 37:2–5 (Evans) (emphasis added). In contrast, if applications are incorrectly completed, the process takes longer—"you're looking at five minutes or so, maybe more, depending on … what the issue is"—because counties must "conduct multiple searches" in the state's voter data to determine who the voter is, sometimes communicate with the voter, and send, receive, and process a cure affidavit. 4/18/14 Trial Tr. 84:18–85:1, 85:23–86:8 (Evans). Because Mr. Evans' testimony was limited to the time required for processing a single application, the Court should not conclude that the processing is "a minimal burden *overall*," as the cumulative burden of processing applications is substantial.

71. In processing absentee ballot applications, county staff implement verification procedures to ensure that the county is sending the absentee ballot

to the correct person, that the person is a registered, eligible voter, and that the person receives only one absentee ballot. Trial Tr. 4.18AM 44:15-25 (Evans). Mr. Evans testified that these verification procedures safeguard the absentee voting process. *Id.* at 45:1-3 (Evans). The Court credits Mr. Evans' testimony and gives it substantial weight.

RESPONSE: Though rare, Mr. Evans testified that it was possible for there to be "egregious human error" that could lead to fraud. 4/18/24 Trial Tr. 49:3–7, 87:11–24 (Evans).

72. When a county election office receives an absentee ballot application, the staff review the information on the form to find an existing voter record to ensure that the voter is registered and eligible to vote in the appropriate election. Trial Tr. 4.18AM 36:3-10 (Evans). The staff compares the information on the form to information listed in the voter file to ensure that there is a match. *Id.* at 36:10-12 (Evans). Once the staff has completed verification, the appropriate county registrar signs the form and stamps the form with the date that the application was received. *Id.* at 36:19-22 (Evans). If an applicant's identification number or date of birth does not match the data in the voter file, the applicant is issued a provisional absentee ballot and a cure affidavit during the window in which ballots may be issued. *Id.* at 38:9-15 (Evans).

RESPONSE: No response.

73. Mr. Evans testified that county staff reject applications where there is not "a reasonable degree of certainty" that the applicant matches an eligible voter in the voter file. Trial Tr. 4.18AM 41:22-42:13, 38:16-39:10 (Evans). In cases of differences in names or a minor discrepancy with respect to addresses, however, Mr. Evans testified that he did not believe the application would necessarily be rejected. *Id.* But if the applicant entered an address on the form that was different from the address found in the voter file, then the application would be rejected. *Id.* Mr. Evans acknowledged that it is possible that different staff members might interpret the "reasonable degree of certainty" standard differently when processing applications. Trial Tr. 4.18AM 42:1-17 (Evans).

RESPONSE: No response other than to note that decisions about a reasonable degree of certainty are made at the county level. 4/18/24 Trial Tr. 41:24–42:6 (Evans).

74. Mr. Evans testified that he was aware of cases in which individuals entered their names or addresses into the absentee ballot application form in ways that did not match their data in the voter file, including circumstances where voters entered nicknames instead of their full first names or where they inadvertently left out directionals on their mailing addresses. Trial Tr. 4.18AM 59:25-60:9 (Evans). Such discrepancies between how a voter enters information on an absentee ballot application and the data on record in the

voter file, assuming that a voter had not actually changed her name or moved to a new address, and according to Mr. Evans "are not ideal". *Id.* at 61:5-11 (Evans).

RESPONSE: When asked whether "it's not ideal when a voter enters information into an application in a way that that information does not exactly match what is in the state voter file," Mr. Evans responded: "It depends." 4/18/24 Trial Tr. 60:10–18 (Evans). He then explained that "county registrars want the accurate information *from the voter*." 4/18/24 Trial Tr. 60:18–21 (Evans) (emphasis added).

75. Mr. Evans testified that applications where the voter's information had been typed were easier to read and process compared to applications where the voter's information had been handwritten. Trial Tr. 4.18AM 63:4-18 (Evans).

RESPONSE: Once again, Plaintiffs cite the statements of their attorneys, rather than testimony of Mr. Evans. Here, when asked whether "counties have communicated to you and your office that processing applications that … had their information typed as opposed to handwritten is easier for the counties," Mr. Evans responded: "It's possible. I don't remember specific conversations around that, but it's possible." 4/18/24 Trial Tr. 63:4–9 (Evans). When pushed whether he would agree that "typed applications do not pose the same problems with legibility as handwritten applications," he

responded: "I think, generally, typed applications can be easier to read than handwritten." 4/18/24 Trial Tr. 63:14–18 (Evans).

76. Applications completed on forms that were issued before SB 202 came into effect are rejected, and counties sought guidance from the Elections Division about how to process such applications when received. Trial Tr. 4.18AM 44:9-14 (Evans).

RESPONSE: No response.

77. When an application is rejected, voters receive an opportunity to cure their application by completing a cure affidavit. Trial Tr. 4.18AM 45:4-17 (Evans); Pls. Ex. 3. In the affidavit, the voter states that he is registered and eligible to vote and that he was the person who submitted the application. *Id.* The voter must submit the completed affidavit with a copy of their identification. *Id*. The Court credits the testimony of Mr. Evans and finds that the cure process imposes a minimal burden on election officials.

RESPONSE: Nothing from the cited testimony suggests that the cure process "imposes a minimal burden on election officials." Mr. Evans testified that election officials handle many tasks during election season. 4/18/24 Trial Tr. 79:4–81:10 (Evans). It does not follow that adding a multi-step process to their task list "imposes a minimal burden."

78. Mr. Evans testified that there are two ways that counties deal with duplicate absentee ballot applications (i.e., where a voter has submitted

another application despite already having submitted one previously). Trial Tr. 4.18AM 39:12-40:6 (Evans). In one method, county staff will mark the second application as rejected because of a request already on file. *Id.* Alternatively, county staff may just file the second application away. *Id.* According to Mr. Evans, county staff retain the paper copy of a duplicate application for the period required by the law. *Id.* Mr. Evans estimated that it takes only a couple of minutes for staff to process a duplicate application. *Id.* at 40:2-6 (Evans). The Court credits the testimony of Mr. Evans and finds that processing duplicative absentee ballot applications imposes a minimal burden on election officials.

RESPONSE: Nothing in the cited testimony supports finding that processing duplicate applications "imposes a minimal burden on election officials." Mr. Evans testified that election officials handle many tasks during election season. 4/18/24 Trial Tr. 79:4–81:10 (Evans). It does not follow that adding more work to their task list "imposes a minimal burden."

79. If a voter requests an absentee ballot but, at some point, before Election Day decides that they would like to vote in person, there are several ways in which they can cancel their absentee ballot request. Trial Tr. 4.18AM 46:18-47:4 (Evans). First, voters can request to have their absentee ballot request canceled before going in person to the polls to vote. *Id.* at 46:18-47:4, 102:4-14 (Evans).

RESPONSE: No response.

80. Second, if a voter who had successfully requested an absentee ballot shows up to vote in person with their absentee ballot, either on Election Day or during early voting, the voter surrenders their ballot to a poll worker, who verifies that there is a ballot inside the envelope he was given and then writes cancelled across the face of the ballot. Trial Tr. 4.18AM 47:6-19 (Evans). The poll worker then enters an override code into the electronic poll book so that he can check the voter in, confirm that the person has not yet voted, and then issue the person a voter access card so that the voter can vote. *Id.* This process takes approximately two to four minutes. *Id.* at 92:7-8 (Evans).

RESPONSE: Mr. Evans explained: "The first way, if they have their ballot with them to surrender, they will hand their ballot over to the poll worker. The poll worker will ensure that there is, in fact, a ballot inside of the envelope that they were handed and then canceled is written across the face of the ballot. And then the poll worker is able to enter in an override code in the electronic poll book so that they can check that voter in, confirm that the person hasn't already voted, and then issue that voter a voter access card so they can vote. So that's path one." 4/18/24 Trial Tr. 47:10–19 (Evans); *see also* Defs.' Ex. 68 (Poll Worker Manual excerpt).

81. Third, if a voter who had successfully requested an absentee ballot shows up to vote in person without their absentee ballot, either on Election

Day or during early voting, a poll worker will look to the poll book to determine if the person had already been issued a ballot and call the county election office to confirm that the person has not voted. Trial Tr. 4.18AM 47:20-48:5 (Evans). The staff in the office cancel the original absentee ballot, and after completing an affidavit, the voter can vote in person. *Id.* at 92:9-15 (Evans). This process takes approximately five minutes. *Id.*

RESPONSE: Mr. Evans stated that this process for each individual takes "around five minutes or more" while the voter is standing in line at the polling location. 4/18/24 Trial Tr. 92:15 (Evans). He further testified that: the time can increase "if the elections office … is at their capacity as far as receiving the phone calls and canceling the ballots and then the poll worker has to wait on hold." 4/18/24 Trial Tr. 92:16–21 (Evans). He also discussed "reports of individuals who were trying to cancel ballots during the 2020 election and they were sitting on hold waiting to get through to be able to cancel the ballot." 4/18/24 Trial Tr. 92:22–93:1 (Evans). In 2020, estimating only an average of *3 minutes* per canceled ballot, this process required 7,440.5 extra hours of work. 4/18/24 Trial Tr. 93:2–12 (Evans).

82. These procedures are in place to ensure that individuals are not able to vote both absentee as well as in person in the same election. Trial Tr. 4.18AM 48:6-10 (Evans). Mr. Evans testified that the steps of this process are not complicated. *Id.* at 101:9-12 (Evans).

RESPONSE: Mr. Evans "would not characterize *any particular step* in the process as complicated." 4/18/24 Trial Tr. 101:9–12 (Evans) (emphasis added). Together, however, these steps are an involved process that occurs while other voters are waiting in line—contributing to longer wait times and sometimes contributing to "an individual believing that they've observed voter fraud when they hear that somebody in line was told that they had requested a ballot[.]" 4/18/24 Trial Tr. 93:18–94:11 (Evans). Additionally, the process is time consuming. 4/18/24 Trial Tr. 93:2–12 (Evans).

83. For individuals whose absentee ballot applications have been accepted, including those who have successfully cured their applications, beginning 29 days from Election Day, a ballot package is prepared for the voter. Trial Tr. 4.18AM 48:12-24 (Evans). The ballot package includes the voter's ballot, a secrecy sleeve, and an exterior envelope. *Id.* Once the package is mailed to the voter, the county registrar marks the ballot as issued to the voter in GARVIS. *Id.*

RESPONSE: No response.

84. Mr. Evans testified that there are procedures in place to ensure that only one ballot at a time is issued to a voter. Trial Tr. 4.18AM 48:25-49:7 (Evans). Thus, even if a voter submits a duplicate absentee ballot application, there is no risk that the voter will receive a second ballot absent "egregious human error" by an election official. *Id.*; Trial Tr. 4.18AM 87:7-20 (Evans).

RESPONSE: Agreeing with Mr. Evans, Mr. Germany testified that although "[t]here's ways to catch" errors that could lead to a voter's being sent a second ballot after submitting a duplicate application, a duplicate ballot could still be issued "especially depending on volumes of registrations, how they're submitted, if there's something that's submitted, maybe a digit transposed somewhere, [or] there can be a duplicate registration," such as if someone goes by their middle name, for example. 4/16/24 Trial Tr. 221:10–222:4 (Germany). Additionally, some voters complained when they received duplicate applications in the mail, wondering "was there some problem with my first one? What's the status of it?" 4/16/24 Trial Tr. 222:5–10 (Germany).

85. There may be circumstances in which a voter may need a new absentee ballot after receiving one. Trial Tr. 4.18AM 49:8-25 (Evans). For example, if a voter makes an error in marking her ballot, she may request a replacement ballot. *Id.* The voter must contact her election office and request in writing that she would like a second ballot issued because she had made an error on or damaged the first ballot. *Id.* In response to such a request, the county registrar marks the first ballot as spoiled in GARVIS and then issues a second ballot to the voter. *Id.*

RESPONSE: No response.

86. The cure process for absentee ballots is similar to the cure process for absentee ballot applications. *Id.* at 51:18-21 (Evans). Voters have until the

close of business on the third day after Election Day to cure their defective absentee ballots. *Id.* at 51:22-52:3 (Evans).

RESPONSE: No response.

87. Mr. Evans testified that the cure process for absentee ballots ensures that the person who submitted the ballot is in fact the person listed in the voter file. Trial Tr. 4.18AM 52:4-15 (Evans). He further testified that this process is generally successful at protecting against fraud. *Id.*

RESPONSE: No response.

88. The Secretary of State provides trainings for county election directors, who pass training information onto their poll workers and other county employees. Trial Tr. 4.16PM 172:2-6 (Germany). Aside from formal trainings, the Secretary of State provides guidance to counties via a message board called "The Buzz." Id. at 171:17-21 (Germany).

RESPONSE: No response.

89. County officials contact the Secretary of State's office to request guidance about how to handle or raise concerns about an election issue, including issues related to absentee voting. Trial Tr. 4.16PM 172:15-21 (Germany). The General Counsel is sometimes involved in such conversations. *Id.* at 172:22-24 (Germany).

RESPONSE: When asked whether he was "ever involved in those conversations with county officials about absentee voting issues," Mr. Germany answered: "Yes." 4/16/24 Trial Tr. 172:22–24 (Germany).

90. The Secretary of State also maintains a website that offers the ability for individuals to lodge an election-related complaint through an Internet portal, and that complaint is sent to the Investigations Division. Trial Tr. 4.17AM 14:17-23 (Watson). For the public, filing complaints through this website is the "[primary]" mode for filing complaints. Trial Tr. 4.17AM 14:9-16 (Watson). Submitting feedback via email is also common. Trial Tr. 4.16PM 168:9-14 (Germany). Complaints are also received via phone, the mail, or through individual counties. Trial Tr. 4.17AM 14:9-16 (Watson).

RESPONSE: No response.

91. Individual questions, such as where someone's polling place is or the status of someone's absentee ballot are generally routed to the Elections Division for someone in that division to research and reach out to the voter. Trial Tr. 4.16PM 170:5-19, 233:6-14 (Germany). Allegations of violations, fraud, or irregularities are handled by the Investigations Division. Trial Tr. 4.16PM 170:5-19, 233:6-14 (Germany).

RESPONSE: No response.

92. Georgia has gone through several changes to its absentee ballot application forms since 2018. Trial Tr. 4.16PM 249:14-16 (Germany).

RESPONSE: Mr. Germany testified that the application form has changed "two or three" times since 2018: "In 2019, we went to a rule where … third parties had to use a form that was substantially similar to the State form…. And then I think in 2020 we tried to further … redesign and streamline the State form. And then there was a change, of course, following SB 202." 4/16/24 Trial Tr. 249:17–24 (Germany).

93. Prior to 2019, and through the 2018 election cycle, Georgia law did not require the use of a specific form for individuals to request an absentee ballot. As a result, absentee ballot application forms that were different from the State's form were distributed by third parties and submitted by voters. Trial Tr. 4.16PM 253:1-17 (Germany). This was especially true during the 2018 election cycle and Mr. Germany, then General Counsel for the Secretary of State, stated that this led to confusion, especially for election officials tasked with recognizing a submitted form as an absentee ballot application. *Id.*

RESPONSE: No response.

94. After the 2018 election, a Rules Working Group—consisting of Secretary of State employees, county officials, and members of the State Election Board representing both political parties—was assembled to create a new State Election Board rule aimed at remedying this problem. Trial Tr. 4.16PM 254:2-9 (Germany). Consequently, a rule was issued in 2019 and

remained in place until SB 202 was enacted after the 2020 election, requiring that absentee ballot application forms be "substantially similar" to the state's absentee ballot application form. *Id.* at 249:14-24, 254:11-14 (Germany). Mr. Germany, who was involved with this rule promulgation process, testified that the state likely also "redesigned the State form" at that time. *Id.* at 249:14-24, 255:4-5 (Germany); Pls. Exs. 228, 229. The Court finds that the implementation of this requirement was an effective way to reduce confusion regarding absentee ballot applications and make it easier for election officials to process them.

RESPONSE: The trial record confirms that substantial voter confusion remained. *See, e.g.*, 4/16/24 Trial Tr. 225:4–22 (Germany); 4/17/24 Trial Tr. 17:16–18:10, 33:7–11 (Watson); 4/18/24 Trial Tr. 88:12–20 (Evans).

95. SB 202 went even further, mandating use of the official state form. Trial Tr. 4.16PM 254:11-14 (Germany). The Court finds that requiring use of the official state form was an effective way to reduce confusion about absentee ballot applications and make those applications easier for election officials to process.

RESPONSE: While requiring use of the official state form may reduce confusion about what document voters receive, nothing in the trial record suggests that requiring use of this form reduces voter confusion that results from prefilled or duplicate applications.

96. SB 202 also mandated the inclusion of a disclaimer on the absentee ballot application forms distributed by third parties, "[c]larifying that the application is not a ballot" and identifying "who it was distributed by." Trial Tr. 4.16PM 254:15-20 (Germany). The disclaimer provision was intended to address concerns regarding duplicate applications, voters mistaking applications for ballots, and reduce instances in which voters assume the applications have been sent to them by the Secretary of State or their county elections office. *Id.* at 223:19-224:3, 224:13-19 (Germany). The Court finds that inclusion of a disclaimer was an effective way to reduce voter confusion about absentee ballot applications they receive in the mail from third parties.

RESPONSE: The Disclaimer Provision is no longer at issue in this case. *See* [Doc. 176; Doc. 179 at 2 n.4]. Additionally, the Disclaimer Provision does not resolve confusion caused by prefilled or duplicate absentee-ballot applications. However, the trial record shows that the Disclaimer Provision works with the Anti-Duplication Provision to allow anyone who received duplicate applications to know whom to call to be removed from the sender's mailing list. 4/16/24 Trial Tr. 224:10–23 (Germany).

97. Following SB 202, there was an additional change to the absentee ballot application form, which, Mr. Germany testified, was done in order to make it "user-friendly" and "workable." Trial Tr. 4.16PM 249:14-24, 255:4-10

(Germany). The Court finds that this was an effective method for reducing voter confusion about absentee ballot applications.

RESPONSE: No response.

98. Mr. Evans testified that, in general, counties aim to process absentee ballot applications on the day that they arrive in the county office or the following day, but they do not always do so. Trial Tr. 4.18AM 23:1-8 (Evans). Given that counties may not always immediately process absentee ballot applications, the Court finds that the publicly available absentee voter file may not contain data for applications that a county received that day but did not process. *Id.* at 23:9-15 (Evans).

RESPONSE: Such a finding would be irrelevant, as SB 202's safe harbor does not turn on the date "a county received" an application. Rather, "[a] person or entity shall not be liable for any violation of this subparagraph if such person or entity relied upon information made available by the Secretary of State within five business days prior to the date such applications are mailed." O.C.G.A. § 21-2-381(a)(3)(A). The safe harbor provision thus "protects an organization if that organization relies on absentee request data the state made available within five business days before the organization mailed its absentee ballot applications[.]" 4/18/24 Trial Tr. 97:19–25 (Evans); *see* Resp. to Pls.' Proposed FOF ¶ 9. Thus, the only question is when the application information is made available to the public.

99. Data for absentee voter applications in GARVIS contain an "Application Date" field meant to reflect the date on which a county received the application. Trial Tr. 4.18AM 21:23-22:6 (Evans). In GARVIS, when county staff create a new record for an absentee ballot application, the date the record is entered is by default the "Application Date." *Id.* at 23:17-23 (Evans). However, staff can manually backdate the "Application Date" if the application was actually received prior to the day on which the record is created. *Id.* at 23:24-24:1 (Evans).

RESPONSE: This proposed finding is irrelevant, as the Anti-Duplication Provision's safe harbor turns on the date application information is made available to the public. *See* Resps. to Pls.' Proposed FOF ¶¶ 9, 98. And the State maintains a record of the date on which every entry is added to the absentee-voter file. 4/18/24 Trial Tr. 97:10–18 (Evans).

100. For example, if a county receives an absentee ballot application on a Tuesday but does not process it until the following day, when the county staff create a record for the application on Wednesday, GARVIS by default inserts Wednesday's date under "Application Date." Trial Tr. 4.18AM 24:2-8 (Evans). County staff must then manually backdate the "Application Date" for that application to Tuesday's date, to reflect when the county actually received the application. *Id.* at 24:9-15 (Evans).

RESPONSE: This proposed finding is irrelevant, as the Anti-Duplication Provision's safe harbor turns on the date application information is made available to the public. *See* Resp. to Pls.' Proposed FOF ¶ 98. And the State maintains a record of the date on which every entry is added to the absentee-voter file. 4/18/24 Trial Tr. 97:10–18 (Evans). Additionally, nothing in the trial record states that county staff *must* (or even do) manually backdate an application date in GARViS. Rather, they "*can* manually backdate it." 4/18/24 Trial Tr. 23:24–24:1 (Evans) (emphasis added).

101. In this scenario, the publicly available absentee voter file will update on Wednesday night, such that the public can view that version of the file on Thursday morning. Trial Tr. 4.18AM 24:16-20 (Evans); Stipulated Facts ¶ 15. The Wednesday night update will overwrite the version of the file that had been uploaded on Tuesday night. Trial Tr. 4.18AM 24:21-23, 25:6-11 (Evans). Thus, on Thursday morning, the public would only be able to access the version of the file that was uploaded on Wednesday evening to the Secretary of State's website. *Id.* at 24:24-25:4 (Evans).

RESPONSE: The public would still be able to access historical versions that they had previously downloaded and saved. 4/18/24 Trial Tr. 20:15–19, 27:23–28:14, 96:9–98:18 (Evans); *see* Resp. to Pls.' Proposed FOF ¶ 54. Additionally, the State maintains a record of when each entry is added to the absentee-voter file. 4/18/24 Trial Tr. 97:10–18 (Evans).

102. Because the county manually backdated the application's "Application Date" to when the application was received on Tuesday, however, the "Application Date" would be listed as Tuesday's date, even though it was only available to the public as of its publishing Thursday morning. *Id.* at 25:12-16 (Evans).

RESPONSE: This proposed finding is irrelevant, and it overlooks substantial evidence to the contrary. *See* Resps. to Pls.' Proposed FOF ¶¶ 9, 54, 98–105.

103. The absentee voter file does not contain a column indicating the date on which a county actually processed a given absentee ballot application. Trial Tr. 4.18AM 25:17-20 (Evans). Because of this, a member of the public reviewing the absentee voter file available on the Secretary of State's website does not have a straightforward way to determine when a given application first appeared in the public version of the file. *Id.* at 26:3-18 (Evans). For example, a member of the public viewing the public file of the absentee voter application previously described, would see the "Application Date" indicates Tuesday, and because nothing indicates when the application was actually processed, the member of the public would not know that this was a newly added record appearing in Thursday's public version for the first time. See Trial Tr. 4.18AM 26:3-18 (Evans).

RESPONSE: This proposed finding is irrelevant, and it overlooks substantial evidence to the contrary. *See* Resps. to Pls.' Proposed FOF ¶¶ 9, 54, 98–102.

104. The only way a member of the public could discern the actual date when receipt of that application was published was if they had been downloading and comparing the public versions of the file published every day. Trial Tr. 4.18AM 26:11-15 (Evans).

RESPONSE: According to the statute, "[a] person or entity shall not be liable for any violation of this subparagraph if such person or entity relied upon information made available by the Secretary of State within five business days prior to the date such applications are mailed." O.C.G.A. § 21-2-381(a)(3)(A). The safe harbor provision "protects an organization if that organization relies on absentee request data the state made available within five business days before the organization mailed its absentee ballot applications[.]" 4/18/24 Trial Tr. 97:19–25 (Evans); *see* Resps. to Pls.' Proposed FOF ¶¶ 9, 98–103. The public could still access historical versions that they had previously downloaded and saved. 4/18/24 Trial Tr. 20:15–19, 27:23–28:14, 96:9–98:18 (Evans); *see* Resps. to Pls.' Proposed FOF ¶¶ 54, 101. And, were there any enforcement action taken, the State maintains a record of the date when each entry was added to the absentee-voter file. 4/18/24 Trial Tr. 97:10–18 (Evans); *see* Resps. to Pls.' Proposed FOF ¶¶ 9, 54, 98–103, 105.

105. The Secretary of State's Elections Division maintains an audit log in which their staff can determine when an individual's information was added to the absentee voter file. Trial Tr. 4.18AM 97:13-18, 98:15-18 (Evans). However, the audit log is not publicly available. *Id.* at 102:24-103:3 (Evans).

RESPONSE: As Mr. Evans testified: "[I]f there were a question raised about an individual's receipt of an absentee ballot application that's potentially a duplicate, through the audit logs could … determine when that individual's information was added to the absentee voter file." 4/18/24 Trial Tr. 97:10–18 (Evans).

106. Based on this evidence and the testimony of Mr. Evans, the Court finds as a matter of fact that the statewide absentee ballot application list does not necessarily accurately reflect who has submitted an absentee ballot application within a given time period or provide reliable information about when an individual requested an absentee ballot or voted.

RESPONSE: Such a finding would be contrary to the trial record. *See* Resps. to Pls.' Proposed FOF ¶¶ 9, 54, 98–105. As Mr. Evans explained without contradiction, the five-day clock for the safe harbor starts to run once the data are made publicly available by the State, not on the date a county election office processes the voter's application. 4/18/24 Trial Tr. 96:17–24 (Evans). Additionally, the record unambiguously shows that organizations like Plaintiffs can comply with the Anti-Duplication Provision by downloading the

absentee voter file on the first day when applications are accepted, saving that file with its time stamp, removing voter IDs from its mailing list, and then mailing the applications to the remaining voters within five days. 4/17/24 Trial Tr. 136:2–12, 139:17–25, 157:8–12, 161:21–162:11 (Grimmer); 4/18/24 Trial Tr. 20:12–19, 27:13–28:14, 96:21–98:18 (Evans). And the same process of downloading the absentee file used for de-deduplicating could also be utilized to defend against any complaints. 4/18/24 Trial Tr. 28:7–14 (Evans).

107. Multiple entities have sent out absentee ballot applications in Georgia. Trial Tr. 4.16PM 255:14-16 (Germany). This includes many third-party entities, including civic organizations and campaigns. *See, e.g.*, Trial Tr. 4.16PM 258:13-16 (Germany); *see also, e.g.*, Trial Tr. 4.15PM 193:14-21 (Lopach) (America Votes sent absentee ballot application mailers in 2020); Trial Tr. 4.15PM 202:8-15 (Lopach) (Everybody Votes Campaign paid for absentee ballot application mailers to be sent); Trial Tr. 4.16PM 261:20-262:7 (Germany) (Abrams Campaign sent absentee ballot application mailers in 2022); Pls. Ex. 99; Pls. Ex. 35-A.

RESPONSE: No response.

108. Prior to SB 202's enactment, some third-party entities prefilled the absentee ballot applications they distributed to voters. Trial Tr. 4.16PM 258:17-23 (Germany).

RESPONSE: No response.

109. Sometimes third-party entities work together to send absentee ballot application mailings. Trial Tr. 4.15PM 202:1-3 (Lopach). For instance, VPC has partnered with the NAACP of Georgia to send mailers. Trial Tr. 4.15PM 221:5-7 (Lopach).

RESPONSE: No response.

110. The Republican Party and Republican candidates for office sent absentee ballot application mailers throughout the 2020 election. Trial Tr. 4.17PM 181:13-19 (Waters); Pls. Ex. 99; Pls. Ex. 35-A. Their mailings were handled by Arena LLC ("Arena"), a political advertising firm that does a variety of direct mailings related to voting, including sending vote-by-mail mailers. Trial Tr. 4.17PM 168:7-12 (Waters). Brandon Waters, a partner at Arena, *id.* at 166:17-20 (Waters), testified that many of Arena's clients send absentee ballot application mailers to encourage people to vote who might otherwise not vote and that including an absentee ballot application makes the mailer more effective. *Id.* at 178:20-179:3 (Waters).

RESPONSE: The evidence in the record does not reflect that Arena sent mailers for all Republican candidates for office in 2020. 4/17/24 Trial Tr. 188:3–7 (Waters). State Defendants offer no response to the remainder of this proposed finding, other than to note that Plaintiffs' First Amendment claim does not turn on whether a *mailer* intended to communicate a message. *See* State Defs.' Post-Trial Proposed FOF & COL ¶ 70 [Doc. 244].

111. Absentee ballot application mailers sent by Arena on behalf of the Republican National Committee and the Trump Presidential Campaign included a cover letter, absentee ballot application, and return envelope. Pls. Ex. 99; Pls. Ex. 35-A. Some of Arena's absentee ballot application mailers include an application with a prefilled election date. Pls. Ex. 35-A; Trial Tr. 4.17PM 187:12-14 (Waters).

RESPONSE: Mr. Waters's testimony was in reference to mailers sent in 2020. 4/17/24 Trial Tr. 181:16–19 (Waters).

112. These mailers also include various messages encouraging the recipient to vote absentee, including "Vote in the Safety and Comfort of Your Home"; "Return this absentee ballot request form today. Ensure your vote counts"; "One more vote in your neighborhood could make the difference"; and finally, quoting former President Donald Trump, "I am going to be voting absentee," the mailer says, "worried about COVID-19, long lines, or bad weather? Join President Trump. Vote Absentee." *See* Pls. Ex. 35-A.

RESPONSE: All the messages above were expressed on a portion of the mailer, not on the absentee-ballot application. *See* Pls.' Ex. 35-A.

113. The Court finds that there are numerous organizations sending out absentee by mail applications to Georgia voters and credits Mr. Lopach's and Mr. Germany's testimony on this point. Trial Tr. 4.15PM 225:20-23

(Lopach); Trial Tr. 4.16PM 255:14-16, 258:13-16 (Germany); Stipulated Facts ¶ 16.

RESPONSE: No response.

114. The Court agrees that the use of direct mail is a "very common" practice in the field of political mobilization. Trial Tr. 4.16AM 85:23-25 (Green). More specifically, the Court credits testimony that sending absentee ballot applications through the mail is also common for political mobilization organizations, including for organizations affiliated with both major parties and non-partisan organizations. *Id.* at 87:9-19 (Green). Such organizations regularly use direct mail to convey their message to the intended recipient. *Id.* at 86:2-7 (Green). The Court also finds that direct mail is not a new phenomenon and dates back until the 1920s. *Id.* at 87:5-8 (Green).

RESPONSE: Nothing in the trial record suggests that the challenged provisions limit Plaintiffs' ability to send direct mail.

115. The Court notes the postal mail has been used to facilitate speech since this country's founding. George Washington, Third Annual Address to Congress (October 25, 1791), *available at* University of California-Santa Barbara, American Presidency Project, https://www.presidency.ucsb.edu/documents/third-annual-address-congress-0; George Washington, Fourth Annual Address to Congress (November 6, 1792), *available at* University of California-Santa Barbara, American

Presidency Project, https://www.presidency.ucsb.edu/documents/fourth-annual-address-congress-0.

RESPONSE: Evidence of postal mail "facilitat[ing] speech" is nowhere to be found in the record. State Defendants do not dispute that the mail is important. And SB 202 does not limit the mail.

116. In a 1791 address to Congress, President George Washington declared the "importance of the post office and post roads" with respect to "the expedition, safety, and facility of communication" and "their instrumentality in diffusing a knowledge of the laws and proceedings of the Government, which, while it contributes to the security of the people, serves also to guard them against the effects of misrepresentation and misconception." George Washington, Third Annual Address to Congress (October 25, 1791), *available at* University of California-Santa Barbara, American Presidency Project, https://www.presidency.ucsb.edu/node/204464. The following year, President Washington again emphasized "the importance of facilitating the circulation of political intelligence and information" via the mail. George Washington, Fourth Annual Address to Congress (November 6, 1792), *available at* University of California-Santa Barbara, American Presidency Project, https://www.presidency.ucsb.edu/documents/fourth-annual-address-congress-0.

RESPONSE: Nothing in President Washington's quoted address supports that mail "has been used to facilitate speech." State Defendants do not dispute that the mail is important. And SB 202 does not limit the mail.

117. Prior to SB 202, in Georgia, Plaintiffs' absentee ballot application mailers consisted of a carrier envelope, cover letter, a prefilled official state application for an absentee ballot, and a preaddressed postage-paid return envelope. Pls. Exs. 26, 27; Trial Tr. 4.15PM 232:22-233:8 (Lopach); Stipulated Facts ¶ 17.

RESPONSE: Prior to SB 202, Plaintiffs' mailers did not always match the official state form, and the included absentee-ballot applications were not always prefilled, even in 2020. 4/15/24 Trial Tr. 207:11–13 (Lopach).

118. After SB 202, Plaintiffs' Georgia absentee ballot application mailers consist of the same elements, but the enclosed application for a mail ballot is not prefilled and the cover letters consequently have different persuasive language. Pls. Exs. 313, 319, 320, 321; Trial Tr. 4.15PM 130:14-16 (Lopach).

RESPONSE: Before SB 202, Plaintiffs' cover letters did not always say that the enclosed absentee-ballot application was prefilled. *See, e.g.*, Pls.' Ex. 26. So, it is not the case that the cover letters "consequently have different persuasive language" after SB 202. And before SB 202, two waves of Plaintiffs' 2020 mailers in Georgia did not have a prefilled absentee ballot application.

4/15/24 Trial Tr. 207:11–13 (Lopach). After SB 202, Plaintiffs also sent mailers that had no absentee-ballot application at all—not simply a blank application. 4/15/24 Trial Tr. 85:1–3 (Lopach).

119. The carrier envelope is addressed to a specific voter selected from the voter file, not simply to "current resident." Trial Tr. 4.15AM 91:21-25 (Lopach). The carrier envelope houses the cover letter, prefilled absentee ballot application form (or, post-SB-202, blank absentee ballot application form), and preaddressed, postage-paid return envelope. *See, e.g.*, Pls. Exs. 26, 321; *see also* Trial Tr. 4.15AM 90:17-19 (Lopach).

RESPONSE: Plaintiffs' messaging is contained in the cover letter and outer envelope. Plaintiffs only experiment with messaging on the cover letter and the outer envelope. 4/15/24 Trial Tr. 244:22–245:8 (Lopach). When asked whether the message is "all in the cover letter," Mr. Lopach responded "uh-huh (affirmative). You will note, starting in 2022, we put a message about voting at home on an envelope as well, but the messages are either on the carrier envelope – some of the messages are on the carrier envelope and in the cover letter." 4/15/24 Trial Tr. 233:22–234:4 (Lopach). The intended recipient's name is on the carrier envelope, the cover letter, and the return envelope. 4/15/24 Trial Tr. 256:6–10 (Lopach).

120. The carrier envelope includes a disclaimer that an absentee ballot application is enclosed, *see* Pls. Exs. 26 (reading "vote at home ballot request

form . . ."), 27 (same), 321 (same), and is being sent by a nongovernmental entity. Trial Tr. 4.15AM 89:8-10 (Lopach). Plaintiffs added this disclaimer at the request of election officials, Trial Tr. 4.15AM 89:10-11 (Lopach), and include it to clarify to the recipient that what is inside is not an actual ballot. *Id.* at 91:2-5 (Lopach).

RESPONSE: No response.

121. The carrier envelope also showcases a union bug. *Id.* at 91:10 (Lopach). Plaintiffs display the union bug to show they are supportive of unions and respect workers, and to make clear to those who would recognize the union bug that Plaintiffs use union printers. *Id.* at 91:13-17 (Lopach); Trial Tr. 4.15PM 239:13-14 (Lopach).

RESPONSE: Plaintiffs include union bugs as "a business decision that we print our mailings at union printers." 4/15/24 Trial Tr. 91:13–15 (Lopach). SB 202 does not impact what Plaintiffs may print on carrier envelopes.

122. In 2022, Plaintiffs added the message, "Sign up to vote from home today" on the carrier envelope to add encouragement for recipients to engage with the mailing. Pls. Exs. 313, 319, 320, 321; Trial Tr. 4.15PM 129:9-11 (Lopach).

RESPONSE: SB 202 does not limit what Plaintiffs may print on carrier envelopes.

123. Plaintiffs are able to track which individuals have received Plaintiffs' mailers because the envelope addressed to the individual contains a United States Postal Service ("USPS") barcode called the intelligent bar code, which is scanned and allows Plaintiffs to track each individual mailer's progress in the postal system. Trial Tr. 4.16AM 40:17-41:10 (Hesla).

RESPONSE: No response.

124. The cover letter is also addressed to the specific voter selected from the voter file. Trial Tr. 4.15AM 92:5-14 (Lopach). It describes the entirety of the package, and "encourage[es] [the recipient] to participate in voting by mail." *Id.* at 92:14-16 (Lopach). The cover letter generally tells the voter the Plaintiffs "have sent [the voter] the enclosed absentee ballot application to make requesting a ballot easy." Pls. Ex. 26; Stipulated Facts ¶ 18.

RESPONSE: Plaintiffs obtain voter information from third-party vendors. *See* 4/15/24 Trial Tr. 237:24–238:2 (Lopach). SB 202 does not alter what Plaintiffs may include in their cover letters.

125. Plaintiffs' cover letters use various messages and graphics. *See* Pls. Exs. 26, 27, 313, 319. For example, cover letters have included an infographic flow chart "fill it, sign it, mail it," a QR code, or a social pressure graph (which showcases the voter's turnout history compared to others). Pls. Exs. 26, 313, 319; Trial Tr. 4.15PM 249:24-250:2 (Lopach). Some cover letters highlight the perspective of election officials while others focus on the safety of voting by

mail. *Compare* Pls. Ex. 26 ("The Georgia Secretary of State and county election officials encourage voters to use mail ballots in the upcoming elections") *with* Pls. Ex. 27 ("The Center for Disease Control recommends lower risk voting options like mail ballots to minimize potential exposure to COVID19.").

RESPONSE: SB 202 does not alter what Plaintiffs may include in their cover letters.

126. When able to, Plaintiffs explicitly highlight the prefilled nature of the application, Pls. Ex. 27 ("I have sent you the enclosed absentee ballot application for Georgia already filled out with your name and address."); Trial Tr. 4.15AM 100:13-14 (Lopach), and they always include language in their cover letter highlighting that an absentee ballot application is enclosed. Trial Tr. 4.15PM 137:22-24 (Lopach).

RESPONSE: Not all of Plaintiffs' pre-SB 202 cover letters mentioned that the included absentee-ballot application was prefilled. *See, e.g.*, Pls.' Ex. 26.

127. The cover letter also includes a disclaimer, "if you've already submitted a request for a ballot by mail for the [year] . . . election, there is no need to submit another request." Pls. Ex. 26. Plaintiffs include this disclaimer to communicate to voters they need only submit one application per election, to be good partners with election administrators, and to avoid spending money on postage for duplicate applications. Trial Tr. 4.15AM 94:14-18 (Lopach). This

disclaimer was added based on feedback from election administrators. Trial Tr. 4.15PM 162:12-14 (Lopach).

RESPONSE: Although Plaintiffs include this statement in a box in the top corner of their cover letter, Mr. Germany testified that voters who had already submitted an absentee-ballot application and who received another one wondered if there was a problem with their submitted application. 4/16/24 Trial Tr. 188:15–189:1, 222:5–10 (Germany). Additionally, the cited portions of Mr. Lopach's testimony do not state that election officials in Georgia requested that Plaintiffs include such a disclaimer. Moreover, the suggestion that Plaintiffs took steps to address concerns from election officials is undermined by the trial record, which confirms that election officials in Florida received so many complaints that they asked Plaintiffs to discontinue their mailings. 4/18/24 Trial Tr. 74:9–75:19 (Evans).

128. The cover letter also makes recipients aware the mailing has been sent by a nongovernmental entity. *E.g.* Pls. Ex. 26; Trial Tr. 4.15AM 94:24-95:4 (Lopach) ("This mailing has been paid for by the Center for Voter Information, CVI. CVI is a nongovernment, nonprofit 501(c)(4) organization ... CVI is not affiliated with state or local election officials."). Plaintiffs also include this disclaimer at the request of election administrators. *Id.* at 95:6-10 (Lopach).

RESPONSE: Plaintiffs include this statement in a box at the bottom of their cover letter with smaller print than the rest of the letter. *See, e.g.,* Pls.' Ex. 26. Additionally, the cited portions of Mr. Lopach's testimony do not state that election officials in Georgia requested that Plaintiffs include such a disclaimer. Moreover, the suggestion that Plaintiffs took steps to address concerns from election officials is undermined by the trial record, which confirms that election officials in Florida previously received so many complaints that they asked Plaintiffs to discontinue their mailings. 4/18/24 Trial Tr. 74:9–75:19 (Evans).

129. Plaintiffs obtain the absentee ballot application from each state government's official website to include in their absentee mail voting mailers. *Id.* at 95:24-25 (Lopach). Before sending an absentee ballot application in their absentee ballot application package, Plaintiffs contact election administrators to confirm they have the correct form. *Id.* at 95:21-24 (Lopach).

RESPONSE: No response.

130. Plaintiffs have been prefilling the applications they include in their mailers since 2006. *Id.* at 80:9-12 (Lopach). To personalize the applications they send, Plaintiffs prefill the voter's first name, middle name, last name, street address, city, county, and zip code and the date of the specific election, including in Georgia prior to SB 202. *See, e.g.*, Pls. Exs. 26, 27; Trial

Tr. 4.15AM 79:21-23, 79:25-80:1, 96:10-12, 96:17-20 (Lopach); *see also* Stipulated Facts ¶ 19.

RESPONSE: The record does not show that Plaintiffs sent prefilled absentee-ballot applications *in Georgia* starting in 2006. Two waves of Plaintiffs' 2020 mailers in Georgia did not have a prefilled absentee-ballot application. 4/15/24 Trial Tr. 207:11–13 (Lopach).

131. The information to prefill is drawn from the state's voter file. Trial Tr. 4.15AM 81:24-82:1, 96:10-14 (Lopach). Plaintiffs currently use two data vendors to get the most up-to-date state voter files. *Id.* at 86:15-24 (Lopach); Trial Tr. 4.16AM 5:3-6 (Lopach).

RESPONSE: Although Plaintiffs could obtain the state's voter file directly from the state, Plaintiffs instead purchase the data from data vendors who alter the data. 4/15/24 Trial Tr. 218:10–13, 219:4–8 (Lopach).

132. Plaintiffs prefill the absentee ballot application based on information from the voter file to convey that the specific recipient should apply for an absentee ballot, Trial Tr. 4.15AM 81:24-82:1, 96:10-14, 97:13-16, 99:5-8 (Lopach), and because they want election administrators to "have as easy a time as possible finding the correct voter file individual." Trial Tr. 4.15PM 173:8-12 (Lopach).

RESPONSE: The trial record shows that the names and addresses Plaintiffs prefill in their applications are obtained from third-party data

vendors. 4/15/24 Trial Tr. 218:10–13, 219:4–8 (Lopach). Thus, the trial record does not show that incorrect data are found in the state's voter file. Additionally, the trial record does not show that prefilling absentee-ballot applications conveys a message. Rather, any message intended by Plaintiffs comes from other components of the mailing. 4/15/24 Trial Tr. 233:22–234:4 (Lopach).

133. In 2020, Plaintiffs' data vendor augmented the data from the state's voter file with commercial data. Trial Tr. 4.15PM 218:6-219:8 (Lopach). The changes to the data caused Plaintiffs to refrain from prefilling two waves of absentee ballot applications it sent in 2020. *Id.* at 207:8-13 (Lopach). When Plaintiffs learned of this practice by their data vendor, Mr. Lopach "demanded" the data vendor make sure that the data Plaintiffs were given came exclusively from the state voter file without augmentation. *Id.* at 219:22-24 (Lopach); Trial Tr. 4.16AM 5:14-18 (Lopach). Since then, Plaintiffs have only received unaugmented Georgia voter file information from the data vendor, and Plaintiffs resumed prefilling once they could confirm the augmentation had been ceased. *Id.* at 5:19-21 (Lopach); *see* Trial Tr. 4.15PM 207:11-13, 207:25-208:1 (Lopach); *see also* Pls.' Ex. 36.

RESPONSE: Upon learning that much of their data was wrong, in two waves in 2020 Plaintiffs' chose to send blank absentee-ballot applications, 4/15/24 Trial Tr. 218:10–13, 219:4–8 (Lopach), but there is nothing in the

record suggesting that the same incorrect information was not still used on the carrier envelope, cover letter, and return envelope. Additionally, this testimony related to only one of the multiple vendors Plaintiffs use for obtaining voter data.

134. Georgia state election officials were aware that Plaintiffs prefilled information on absentee ballot applications, and in 2020, they even asked Plaintiffs to prefill additional information, specifically the election date on the absentee ballot applications sent in their mailers. Pls. Ex. 15; Trial Tr. 4.15AM 96:22-97:3 (Lopach); Trial Tr. 4.15PM 165:2-18 (Lopach). After SB 202's passage, when third parties were no longer able to prefill the election date on the applications they distributed, at least one county inquired whether "election date or county" is "something we can prefill" because the county had received numerous absentee ballot applications missing that information. Pls. Ex. 50.

RESPONSE: A Georgia official only suggested that Plaintiffs prefill the specific election date, not any other information on absentee ballot applications. *See* Pls.' Ex. 15.

135. Prior to the passage of SB 202, no Georgia election official ever asked Plaintiffs not to prefill information on the application. Trial Tr. 4.15PM 165:2-25 (Lopach).

RESPONSE: The trial record does not include any evidence of Georgia officials asking Plaintiffs not to prefill information, but the record *does* show election officials in Florida asking Plaintiffs to "stop with the mailings or to use better data." 4/18/24 Trial Tr. 74:9–75:19 (Evans).

136. In 2022, Georgia created a new absentee ballot application that is two pages long, which requires more engagement on the part of the recipient. Trial Tr. 4.15PM 129:18-22, 130:12-14 (Lopach); Pls. Ex. 321. After this change, Plaintiffs asked the Georgia Secretary of State's Office in June 2022 whether they could add a disclaimer to the application highlighting that voters needed to fill out both pages. Pls. Ex. 25; Trial Tr. 4.15PM 179:7-12 (Lopach). The Secretary of State's Office never responded to the request. Trial Tr. 4.15PM 179:13-14 (Lopach). Plaintiffs decided to add an instruction box to their cover letter flagging for the voter that the application was two pages, but they would have preferred to include the disclaimer on the application itself and to prefill the voter's name on both pages of the application. They preferred to use a disclaimer and prefill because they do not want a voter to not understand the directions and consequently be disenfranchised due to missing identification voter information on both pages. *Id.* at 131:3-6, 179:18-180:22 (Lopach).

RESPONSE: SB 202 does not alter the information Plaintiffs may include in their cover letters. Additionally, there is no evidence in the trial

record that a voter would be disenfranchised by not correctly filling out an absentee-ballot application. Rather, such a voter would simply complete the cure process: "[F]orgetting to turn in the second page of the application also does not warrant rejection[.]" 4/18/24 Trial Tr. 43:9–14 (Evans).

137. The postage-paid return envelope is preaddressed from the voter to the county board of registrar' office, *E.g.* Pls. Ex. 26; Trial Tr. 4.15AM 98:11-19 (Lopach), and contains a USPS barcode called Share Mail; when scanned, this barcode informs USPS that Plaintiffs should be charged for the postage necessary to deliver the return envelope to the governmental office and effectively allows Plaintiffs to track which individuals have returned their absentee ballot application to the appropriate governmental office. Trial Tr. 4.16AM 41:12-23 (Lopach). Plaintiffs then verify the person has in fact applied for an absentee ballot by checking the state's voter file which lists absentee voters. Trial Tr. 4.15AM 73:13-14 (Lopach).

RESPONSE: No response.

138. Plaintiffs always include a carrier envelope, cover letter, absentee ballot application, and return envelope because they believe "these components work together to create the most effective messaging . . . and most effective engagement with potential voters." Trial Tr. 4.15PM 138:25-139:5, 139:12-15 (Lopach). The Court credits the testimony of Mr. Lopach and finds that the components of Plaintiffs' mailers are intertwined and that

Plaintiff believes that sending a mailer complete with each component is the most effective way to communicate its message.

RESPONSE: Nothing in SB 202 prohibits Plaintiffs from sending blank absentee-ballot applications in their mailers. Additionally, the trial record does not show that Plaintiffs' mailers always include four parts. For example, Plaintiffs' second mailing in 2022 lacked an absentee-ballot application. 4/15/24 Trial Tr. 85:1–3 (Lopach). Also, Mr. Lopach testified that the message is included on the carrier envelope and in the cover letter. 4/15/24 Trial Tr. 234:2–4 (Lopach). Even if Plaintiffs believe the four-part mailer is most effective because it reduces transaction costs, there is no evidence in the trial record showing that the four parts are "intertwined."

139. Plaintiffs send their absentee ballot application mailers to voters in the New American Majority, and voters who share the values of wanting to see an inclusive electorate. Trial Tr. 4.15AM 52:16-19 (Lopach); Trial Tr. 4.15PM 187:19-188:5, 188:17-21, 197:18-21 (Lopach).

RESPONSE: Plaintiffs do not send their mailers to all voters in the New American Majority, but rather only a subset of voters who meet certain qualifications. 4/15/24 Trial Tr. 190:24–192:17 (Lopach). Additionally, Mr. Lopach testified that as of 2018, Plaintiffs "made a business decision to target people in the mid and low propensity voting scale." 4/15/24 Trial Tr. 191:11–193:7 (Lopach).

140. Plaintiffs' mailing lists have changed since 2020. Trial Tr. 4.15PM 185:23-186:12 (Lopach). In 2020, due to the pandemic, Plaintiffs sent their absentee ballot mailers to a broad swath of the electorate "because it was not clear . . . who would vote in a pandemic election." *Id.* at 185:23-25 (Lopach). After 2020, Plaintiffs "learned that the most responsive people to [their absentee voting] programs are people who have voted by mail before or people who are newly registered and new voters, or those aging into a 65 and older cohort who are thinking differently about how they may want to spend their time." *Id.* at 186:1-5 (Lopach). Plaintiffs therefore began specifically sending their absentee ballot application mailers to this cohort in recognition that individuals who chose to vote in person during a pandemic election "with all of the complexities of that moment" are more likely to continue to vote in person and be less responsive to their vote-by-mail message. *Id.* at 186:1-12 (Lopach). Thus, Plaintiffs now send mailers to those they know are more responsive to an absentee voting message. *Id.* at 186:6-8 (Lopach).

RESPONSE: Plaintiffs' "absentee voting message" is included in their envelopes and cover letters, which are unaffected by SB 202. 4/15/24 Trial Tr. 233:22–234:4 (Lopach).

141. Plaintiffs take a variety of steps before finalizing their absentee ballot application mailing list. Pls. Exs. 66, 172; Trial Tr. 4.15PM 174:17-175:3 (Lopach).

RESPONSE: Plaintiffs' *vendors* take these steps. 4/16/24 Trial Tr. 25:13–17 (Hesla). Moreover, not all the steps outlined in Plaintiffs' Exhibit 66 apply to vote-by-mail lists rather than voter registration lists. 4/15/24 Trial Tr. 174:17–21 (Lopach). For example, it is not clear why Plaintiffs would check their vote-by-mail list, supposedly taken directly from the state's voter file, against "a database of over 3,000 common pet names and fictitious names." Pls.' Ex. 66 at 1.

142. The Postal Service requires those engaging in mass mailings to use what is called the "Address Correction Service," which specifies a particular format for mailing addresses. Pls. Ex. 172; Trial Tr. 4.15PM 172:19-172:3 (Lopach). On the carrier envelope, Plaintiffs use the mailing address directed by the Address Correction Service. This may be a different address than what is on the state voter file, so the address on the carrier envelope may be different than the prefilled address on the absentee application. Trial Tr. 4.15PM 173:4-12 (Lopach).

RESPONSE: No response.

143. Plaintiffs exclude absentee ballot application mailers to households with five or more target names because that is often indicative of incorrect data. Pls. Ex. 172; Trial Tr. 4.15PM 173:17-23 (Lopach).

RESPONSE: No response.

144. Plaintiffs check Georgia's publicly available absentee voter file to get information on who has applied for an absentee ballot. Trial Tr. 4.15AM 87:2-12 (Lopach). Plaintiffs suppress these voters from their mailing list when they are constructing it. Trial Tr. 4.16AM 24:22-26:11 (Hesla); Trial Tr. 4.15PM 230:20-24 (Lopach). When able to send multiple waves of mailers, Plaintiffs also take measures to remove respondents of their prior absentee ballot application mailer from their later absentee ballot application mailer mailing list. Trial Tr. 4.15PM 230:15-18, 185:14-17 (Lopach).

RESPONSE: No response other than to note that these steps are taken by Plaintiffs' vendors, not by Plaintiffs. 4/15/24 Trial Tr. 86:21–87:15 (Lopach).

145. During the course of constructing their list, Plaintiffs compare it to the National Change of Address database twice to identify and update address information of individuals who have moved. Pls. Ex. 172; Trial Tr. 4.15PM 171:18-21 (Lopach). Plaintiffs remove voters who are flagged by the National Change of Address database from their absentee ballot application mailing list because they do not want to send an absentee ballot application to someone who has moved and not updated their voter registration. Trial Tr. 4.15PM 171:22-172:6 (Lopach).

RESPONSE: These steps are taken by Plaintiffs' vendors. 4/16/24 Trial Tr. 25:13–17 (Hesla). Additionally, the trial record shows that, in 2020, Plaintiffs nonetheless sent Georgia election mailers to individuals located in

other states. Plaintiffs' unsubscribe list notes nineteen unsubscribe requests due to the recipients having moved out of state. Pls.' Ex. 95; *see also* 4/17/24 Trial Tr. 25:22–26:8 (Watson).

146. Plaintiffs compare their absentee ballot application mailing list to six different lists of deceased individuals to remove such individuals from their vote-by-mail mailing list. Pls. Ex. 172; Trial Tr. 4.15PM 172:11-15 (Lopach).

RESPONSE: These steps are taken by Plaintiffs' vendors. 4/16/24 Trial Tr. 25:13–17 (Hesla). Yet Plaintiffs' unsubscribe list and complaints to the Secretary of State's Office show that deceased voters still received similar mailings. Pls.' Ex. 172; *see* 4/17/24 Trial Tr. 18:16–19 (Watson).

147. Plaintiffs have asked the Georgia Secretary of State's Office to review their mailing list, and the office has declined to do so. Pls. Ex. 13; Trial Tr. 4.15AM 88:23-89:3 (Lopach); Trial Tr. 4.15PM 175:22-176:1, 176:19-22 (Lopach). Where a state agrees to review Plaintiffs' mailing lists, such as in Nevada, their review can impact who Plaintiffs send their absentee ballot application mailers. Trial Tr. 4.15PM 175:6-10 (Lopach).

RESPONSE: Even if the Elections Division had time to respond to time-consuming requests, 4/18/24 Trial Tr. 81:6–8 (Evans), Georgia does not maintain a separate "rollover list" that the Elections Division could send beyond the absentee voter file, which is already publicly available. 4/16/24 Trial Tr. 177:21–178:18 (Germany); 4/17/24 Trial Tr. 160:8–20 (Grimmer);

4/18/24 Trial Tr. 95:13–15 (Evans); *see also* Resps. to Pls.' Proposed FOF ¶¶ 148, 284.

148. In 2022, Plaintiffs also asked the Georgia Secretary of State's Office for Georgia's rollover list. Pls. Ex. 25. Plaintiffs wanted to suppress that list from their mailing list to avoid sending a duplicate mailer. Trial Tr. 4.15PM 145:11-13, 178:17-18, 178:23-25 (Lopach). The Secretary of State's Office did not send Plaintiffs Georgia's rollover list. Trial Tr. 4.15PM 179:3-4 (Lopach). It is unclear whether voters on the rollover list appear on the state's voter file as voters who requested an absentee ballot. Trial Tr. 4.15PM 213:3-11 (Lopach).

RESPONSE: Contrary to Mr. Lopach's confusion, there is nothing unclear about how the State tracks voters in "rollover" status. Voters who have requested absentee ballots for the entire election cycle are listed in the absentee voter file. 4/16/24 Trial Tr. 177:21–178:18 (Germany); 4/17/24 Trial Tr. 160:8–20 (Grimmer); 4/18/24 Trial Tr. 95:13–15 (Evans). If Plaintiffs wished to see the names of such voters, they were available on the absentee voter file. At the time when Plaintiffs made this request to the Secretary of State's Office, election officials were substantially occupied with many other tasks. 4/18/24 Trial Tr. 79:4–81:10 (Evans).

149. Additionally, Plaintiffs have corresponded with other nonprofits in order to avoid sending duplicate mailers and to receive input on their mailing

list. Trial Tr. 4.16AM 4:22-5:2 (Lopach); Trial Tr. 4.15PM 193:25-194:1, 195:13-16 (Lopach).

RESPONSE: The evidence cited by Plaintiffs does not show that the communications were intended to avoid sending duplicate mailers *between Plaintiffs and other groups*. Their correspondence was intended to "share voter data of who had previously requested an absentee ballot in Georgia," which is the same information as the State already provides publicly through the absentee voter file. 4/15/24 Trial Tr. 196:12–15 (Lopach).

150. Plaintiffs' mailers contain a disclaimer telling recipients who do not want to receive Plaintiffs' mailers that they can unsubscribe using the unique unsubscribe code provided by Plaintiffs on the mailing. *See, e.g.*, Pls. Exs. 26, 27, 95, 321; Trial Tr. 4.15PM 180:7-14 (Lopach). Voters can use that code to unsubscribe via Plaintiffs' website, email, or telephone, and it is required to make sure the correct person is unsubscribed. Trial Tr. 4.15PM 180:14-181:8 (Lopach). Mr. Lopach that, "in these rather fraught times around elections, [they] would hate to see somebody organize a project to wholistically unsubscribe young people or people of color from [their] mailings in an effort to reduce [their] ability to impact underrepresented communities." *Id.* at 181:9-13 (Lopach).

RESPONSE: No response.

151. Unsubscribing will remove an individual from all future mailings at their current address. *Id.* at 181:1-2, 185:2-3 (Lopach).

RESPONSE: No response, other than to note that Plaintiffs' unsubscribe list includes several unsworn statements from recipients who claimed that they had previously requested to unsubscribe but were still receiving mailings. Pls.' Ex. 95.

152. Many voters have unsubscribed from Plaintiffs' mailing list. *See* Pls. Ex. 95. Though unsworn statements, the unsubscribe requests show that voters have unsubscribed from Plaintiffs' mailers and indicated various reasons for doing so, including disagreement with Plaintiffs' encouragement to vote by mail. For example, unsubscribers have written:

- "I do not agree with you encouraging people to vote by mail – VOTE IN PERSON"
- "Please stop wasting money encouraging me to get an absentee ballot or to vote. I always vote and I vote in person"
- "I will vote in person, mail may be delayed"
- "I just received an 'Application for Official Absentee Ballot' with a cover letter from Lionel Dripps in the mail. Unsolicited. I have to say that it looks iffy as hell to me. I did some research on the internet and it looks like the Center for Voter Information is perhaps legit. But, just who, in these extremely divided times, when people are filled with suspicions about both the government itself and other organizations working against our voting rights--just who do you think will actually use this form? It seems naive of you to think that people are going to use it. I am not. It's going in the trash. Lest you think I'm some kind of fringe,

> conspiracy nut--no, I'm a mainstream Democrat who regularly votes. I love how the second paragraph of the cover letter opens: 'Voting by mail is EASY.' Really? Read any news lately?"

Pls. Ex. 95. The Court credits the unsubscribe responses as demonstrative of recipients' understanding of and expressing disagreement with Plaintiffs' message.

RESPONSE: Plaintiffs' Exhibit 95 shows that many voters have requested to be unsubscribed, but it does not show that they actually were removed from any mailing lists. Further, the Court sustained the State Defendants' objection to the use of this evidence in this manner. 4/15/24 Trial Tr. 184:9–21 (Lopach) (the Court stating that it would not "consider that last answer then"). That evidence therefore should not be considered here.

153. Similarly, Mr. Waters testified that many voters unsubscribe from Arena's mailings because they "don't agree with the contents [of the mailing] or they oppose the other person in the mailing. Or some people object to absentee applications having . . . their personal information on them." Trial Tr. 4.17PM 191:19–192:4 (Waters).

RESPONSE: The testimony does not support Plaintiffs' use of "many." The quoted testimony discusses complaints, not unsubscribe requests, and it states that "[s]ometimes they don't agree with the contents …." 4/17/24 Trial Tr. 191:19–25 (Waters). Moreover, when asked if "recipients will ask to be

removed from the mailing list," Mr. Waters responded: "Occasionally." 4/17/24 Trial Tr. 192:1–4 (Waters). Mr. Waters's answer highlights that the Prefilling Prohibition was motivated by problems with both correct and incorrect prefilled information. *See* 4/16/24 Trial Tr. 203:2–204:22 (Germany).

154. Since 2010, Plaintiffs have worked with a direct mail firm called Mission Control, which produces voter registration and absentee ballot application mailings for Plaintiffs. Trial Tr. 4.16AM 7:13–17, 8:14–23 (Hesla).

RESPONSE: No response, other than to note that Mission Control "work[s] for generally Democratic candidates in progressive organizations, communicating information about their elections or their agendas to voters." 4/16/24 Trial Tr. 9:1–3 (Hesla).

155. Plaintiffs provide Mission Control with the language that they would like to use in their mailings. Trial Tr. 4.16AM 9:10–11, 24:8–9 (Hesla). Mission Control in turn incorporates this language into art files, also known as "creatives," which capture what the mailings will look like in their final printed form. *Id.* at 9:11-13, 24:9-11 (Hesla). Mission Control then works with the printing companies with which it subcontracts to coordinate and implement the printing and mailing processes. *Id.* at 9:13-16 (Hesla).

RESPONSE: No response, other than to note that Mission Control "only use[s] union printers," because "that aligns with [Mission Control's] values" and "with the values of [its] clients." 4/16/24 Trial Tr. 11:15–21 (Hesla).

156. Mission Control, in coordination with Plaintiffs, reviews and approves proofs of the mailings at various points in the printing process. Trial Tr. 4.16AM 9:17-21 (Hesla). Mission Control also sends staff to the printing sites as printing takes place to review samples of the mailings and ensure that there are no errors. *Id.* at 9:21-22 (Hesla).

RESPONSE: No response.

157. In its work with Plaintiffs, Mission Control produces mailings for twenty to twenty-five states at a time. Trial Tr. 4.16AM 9:25-10:1 (Hesla). For each state, there are several different versions of the mailers sent to voters, and each mailer is personalized for every voter. *Id.* at 10:1-3 (Hesla).

RESPONSE: Ms. Hesla didn't describe different versions of *mailers*—she testified that there would be "multiple different *letters* to voters," one of the separate items included in a mailer. 4/16/24 Trial Tr. 10:1–9 (Hesla) (emphasis added).

158. According to Maren Hesla, a partner at Mission Control, few printers have the capacity to print such a high volume of pieces and have the ability to handle the complexity of the printing and programming necessary for Mission Control's work with Plaintiffs. Trial Tr. 4.16AM 11:1-13 (Hesla). Mission Control only uses union printers as company policy. *Id.* at 11:14-21 (Hesla). For its work with Plaintiffs, Mission Control can only use two printers, given the complexity of the projects it undertakes for Plaintiffs,

involving several hundred creatives, each with different programming, and the number of pieces of mail—ranging from ten to twenty million—that Mission Control produces for Plaintiffs. *Id.* at 10:13-11:13, 11:22-12:3 (Hesla). The Court finds Ms. Hesla's testimony credible and grants substantial weight to it.

RESPONSE: The Court cannot find Ms. Hesla's testimony credible or worthy of any weight where, as here, it is directly contradicted by other substantial trial testimony. Indeed, the trial record identifies one company that can do exactly what Plaintiffs say they want to do and what Plaintiffs say no printer is capable of doing. 4/17/24 Trial Tr. 173:2–14 (Waters). It is Plaintiffs' business decision to use union printers that imposes any potential limitations. Mr. Lopach testified that "[i]t is a business decision to use union printers," "[e]ven if that means that there are certain programs [Plaintiffs] can't do because the union printers can't meet the deadlines[.]" 4/15/24 Trial Tr. 261:13–18 (Lopach). The effects of Plaintiffs' decision to use only union printers cannot fairly be attributed to SB 202.

159. In its work with Plaintiffs, Mission Control and its printer subcontractors use a method of printing called inline printing. Trial Tr. 4.16AM 13:1-3 (Hesla). In inline printing, very large rolls of paper, approximately two feet in width, five feet in height, and 2,000 pounds in weight, are loaded into printing presses. *Id.* at 13:7-11 (Hesla).

RESPONSE: No response.

160. Through inline printing, the components of each mailing to a particular individual—the personalized cover letter addressed to the individual, the prefilled absentee ballot application form, and the return envelope addressed to the appropriate governmental authority—are printed sequentially on the same roll of paper. Trial Tr. 4.16AM 13:12-14:6 (Hesla). At the end of the printing process, these components are then cut and folded into the appropriate sizes and shapes. *Id.* at 14:4-14 (Hesla). These components are then moved to another printer, where they are wrapped up into an envelope addressed to the individual. *Id.* at 14:15-18 (Hesla).

RESPONSE: No response.

161. Mission Control and Plaintiffs choose to use inline printing because it is the printing methodology with the lowest error rate. Trial Tr. 4.16AM 15:2-10 (Hesla). For example, using inline printing avoids instances in which the personalized components of Plaintiffs' mailings are mistakenly wrapped into an envelope addressed to a different individual. *Id.*

RESPONSE: No response, other than to note that Mr. Waters testified that Arena could perform the same tasks Plaintiffs require of their printers. 4/17/24 Trial Tr. 172:4–173:14 (Waters).

162. Mission Control and Plaintiffs also choose inline printing because it is extremely cost-effective for printing projects at high volumes as compared

to small quantities. It is cost effective because of the significant start-up costs to starting an inline printing project, including the time and effort it takes to load the sizable rolls of paper and to get the ink flowing through the large printing presses used in inline printing. Trial Tr. 4.16AM 15:16-19, 16:16-23 (Hesla).

RESPONSE: No response.

163. Brandon Waters also testified that inline printing is ideal for absentee ballot applications mailers and makes prefilling such applications more efficient. Trial Tr. 4.17PM 176:25-177:10 (Waters).

RESPONSE: No response.

164. Mission Control estimates that, for a project of 250,000 pieces of mail, inline printing costs 44 cents per piece. Trial Tr. 4.16AM 16:24-17:5 (Hesla). At a million pieces, the cost per piece drops to 30 cents. *Id.* For ten million pieces, the cost per piece drops to 21 cents. *Id.*

RESPONSE: No response.

165. Approximately six weeks before printing begins, Plaintiffs provide Mission Control with the voter data files, containing the names, mailing information, and other necessary pieces of data for the individual mailers to be sent appropriately. Trial Tr. 4.16AM 24:11-14, 27:13-17 (Hesla). Mission Control needs Plaintiffs to upload the voter data files for the intended recipients at this point so that programming can begin, ensuring that

different pieces of data (e.g., a voter's first name) are populated in the appropriate places in the mailer. *Id.* at 27:18-28:4 (Hesla).

RESPONSE: Mr. Waters agreed with Plaintiffs' counsel that "factors like union printers and inline printing targeting can affect the timing and cost of absentee ballot application mailers[.]" 4/17/24 Trial Tr. 194:13–16 (Waters). And Plaintiffs acknowledge the risk of refusing to do business with non-union printers: "It is a business decision to use union printers," "[e]ven if that means that there are certain programs [Plaintiffs] can't do because the union printers can't meet the deadlines[.]" 4/15/24 Trial Tr. 261:13–18 (Lopach). And the trial record confirms that other companies, like Arena, can handle Plaintiffs' printing needs without requiring such extensive time before the mailings are sent. 4/17/24 Trial Tr. 172:4–173:14 (Waters).

166. Mission Control creates a matrix or spreadsheet that helps instruct the printer how to match individual voters with the appropriate creative, envelopes, and, if applicable, disclaimers. Trial Tr. 4.16AM 20:2-11 (Hesla); Pls. Ex. 330.

RESPONSE: No response, other than that the trial record confirms that other companies, like Arena, can handle Plaintiffs' printing tasks within SB 202's timing requirements. 4/17/24 Trial Tr. 172:4–173:14 (Waters).

167. Mission Control then uploads the matrix, voter data files, and creatives to the printer, which then spends several weeks programming to

make sure that all of the content is combined appropriately in preparation for printing the mailers. Trial Tr. 4.16AM 24:15-21 (Hesla).

RESPONSE: No response, other than to note that the trial record confirms that other companies, like Arena, can handle Plaintiffs' printing tasks within SB 202's timing requirements. 4/17/24 Trial Tr. 172:4–173:14 (Waters).

168. The printer subsequently returns proofs to Mission Control and Plaintiffs for their review and approval. Trial Tr. 4.16AM 24:22-25:3 (Hesla).

RESPONSE: No response, other than to note that the trial record confirms that other companies, like Arena, can handle Plaintiffs' printing tasks within SB 202's timing requirements. 4/17/24 Trial Tr. 172:4–173:14 (Waters).

169. Once Mission Control and Plaintiffs approve the proofs, Plaintiffs begin to create what is called a data suppression file, identifying which individuals should not be sent a mailer because they have moved, died, or already requested an absentee ballot application. Trial Tr. 4.16AM 25:1-3 (Hesla). To create this file, Plaintiffs consult data from the various secretaries of state and work with commercial vendors to identify individuals who, since the time that Plaintiffs first provided Mission Control with the voter data files, have died, moved, or, where states provide absentee ballot application information during a time when Plaintiffs are printing, have already requested an absentee ballot application. *Id.* at 25:4-21 (Hesla).

RESPONSE: No response, other than to note that the trial record confirms that other companies, like Arena, can handle Plaintiffs' printing tasks within SB 202's timing requirements. 4/17/24 Trial Tr. 172:4–173:14 (Waters).

170. It takes approximately six days to create the data suppression file, which is created based on data procured via commercial vendors and requires manipulation of sizable files. Trial Tr. 4.16AM 32:15-33:3 (Hesla).

RESPONSE: No response, other than to note that the trial record confirms that other companies, like Arena, can handle Plaintiffs' printing tasks within SB 202's timing requirements. 4/17/24 Trial Tr. 172:4–173:14 (Waters).

171. Approximately three days before printing begins, Plaintiffs provide Mission Control with the data suppression file, which is in turn uploaded to the printer. Trial Tr. 4.16AM 25:20-21, 30:15-18 (Hesla). Mission Control and Plaintiffs endeavor to use the most up-to-date data possible but cannot upload the data suppression file any closer to printing than three days before printing begins, given the time needed to process the data and to ensure that no errors are introduced. *Id.* at 30:19-31:4 (Hesla). It takes the printer several days to locate the individuals identified in the data suppression file in the voter data files and remove them from the voter data files, such that those individuals are not sent mailers. *Id.* at 25:22-26:5, 33:11-18 (Hesla).

RESPONSE: The record shows that at least one other printer, Arena, generally removes names in "12 to 24 hours at most. Probably less than 12." 4/17/24 Trial Tr. 172:1–3 (Waters). And Arena can remove names from an absentee-ballot application mailing list within a five-business day window and "can't imagine why someone wouldn't be able to do that[.]" 4/17/24 Trial Tr. 172:14–173:14 (Waters). Plaintiffs, moreover, acknowledge the risk of refusing to do business with non-union printers: "It is a business decision to use union printers," position "[e]ven if that means that there are certain programs [Plaintiffs] can't do because the union printers can't meet the deadlines[.]" 4/15/24 Trial Tr. 261:13–18 (Lopach). The effects of Plaintiffs' decision to use only union printers cannot fairly be attributed to SB 202.

172. Once the voter data files have been "cleaned" (i.e., the names in the data suppression file have been removed from the final mailing lists), it then takes the printer one or two days to load the clean voter data files and begin printing. Trial Tr. 4.16AM 26:11-13 (Hesla). That is, once the names identified in the data suppression file are removed, the printer uploads the final voter data file; begins the process of "make ready," which are the steps necessary before printing begins, and begins printing the mailers. *Id.* at 33:11-18 (Hesla).

RESPONSE: The record shows that at least one other printer, Arena, can remove names from an absentee-ballot application mailing list within a

five-business day window and "can't imagine why someone wouldn't be able to do that." 4/17/24 Trial Tr. 172:14–173:14 (Waters). Plaintiffs acknowledge the risk of refusing to do business with non-union printers: "It is a business decision to use union printers," "[e]ven if that means that there are certain programs [Plaintiffs] can't do because the union printers can't meet the deadlines[.]" 4/15/24 Trial Tr. 261:13–18 (Lopach). The effects of Plaintiffs' decision to use only union printers cannot fairly be attributed to SB 202.

173. The printer can print about 485,000 packages a day; thus, a project of two million mailings would take approximately four days. Trial Tr. 4.16AM 33:19-25 (Hesla).

RESPONSE: The record shows that at least one other printer, Arena, can remove names from an absentee-ballot application mailing list within a five business day window and "can't imagine why someone wouldn't be able to do that." 4/17/24 Trial Tr. 172:14–173:14. Plaintiffs acknowledge the risk of refusing to do business with non-union printers: "[i]t is a business decision to use union printers." 4/15/24 Trial Tr. 261:13–18 (Lopach). Plaintiffs hold this position "[e]ven if that means that there are certain programs [Plaintiffs] can't do because the union printers can't meet the deadlines[.]" *Id.* The effects of Plaintiffs' decision to use only union printers cannot fairly be attributed to SB 202.

174. During printing, Mission Control and Plaintiffs have staff present at the printing site so that the printer can pull samples of the printed mailers, allowing the staff from Mission Control and Plaintiffs to review these samples for errors. Trial Tr. 4.16AM 26:13-20 (Hesla).

RESPONSE: No response.

175. Ms. Hesla testified that avoiding errors and ensuring accuracy in the mailers are important to Mission Control and Plaintiffs because they seek to avoid creating any confusion among their mailers' recipients. Trial Tr. 4.16AM 49:17-50:3 (Hesla). Plaintiffs seek to convey the message that voting by mail is easy, safe, and secure, and any errors in their mailers call that message into doubt. *Id.*

RESPONSE: No response as to the first sentence. Nothing in the citation mentions Plaintiffs seeking to convey any message.

176. If staff from Mission Control or Plaintiffs discover an error during the printing process, the printing process is put on hold—that is, the presses stop printing. Trial Tr. 4.16AM 34:17-35:11 (Hesla). For example, Ms. Hesla testified about one instance in which staff discovered that some of the political party names in a mailer were "randomly bolded" in the samples they examined, although this error did not appear in the proofs. *Id.* To rectify the error, printing was stopped, and the art files were corrected and

reuploaded. *Id.* The error caused printing to stop for approximately fourteen hours. *Id.*

RESPONSE: No response.

177. Once printed, the mailers are placed into trays, each of which can hold 250 pieces of mail. Trial Tr. 4.16AM 35:16-22 (Hesla). The trays are then loaded five trays deep onto pallets, which are then moved onto trucks according to the pallets' next destination. *Id.* at 26:21-22, 35:25-36:3 (Hesla). The trucks then transport the mailers to postal distribution centers, where the United States Postal Service sorts the mailers for distribution to individual post offices and, ultimately, mail carriers. *Id.* at 26:22-27:4 (Hesla).

RESPONSE: No response, other than to note that the trial record confirms that other companies, like Arena, can handle Plaintiffs' printing tasks within SB 202's timing requirements. 4/17/24 Trial Tr. 172:4–173:14 (Waters).

178. When Mission Control does work for both Plaintiffs, mailers for VPC are printed first, and then CVI mailers are printed. Trial Tr. 4.16AM 36:12-16 (Hesla). Thus, all VPC mailers—for Georgia and all other states that VPC is targeting—are printed and loaded onto trucks first. *Id.* The CVI mailers—for Georgia and all other states CVI is targeting—are then printed and loaded onto trucks. *Id.*

RESPONSE: No response.

179. It takes approximately ten days for the trucks to be loaded, the trucks to transport the pallets to shipping facilities, and the shipping facilities to send out the mailers. Trial Tr. 4.16AM 36:17-23 (Hesla). Thus, Mission Control expects that mailers would arrive in voters' homes approximately 10 to 15 days after they are loaded onto trucks. *Id.*

RESPONSE: Ms. Hesla agreed that she "offer[ed] the opinion in [Pls.' Ex. 40] that it's physically impossible to comply with the Georgia law even without a full understanding of when that five-day period started[.]" 4/16/24 Trial Tr. 68:5–11 (Hesla). Mr. Waters, moreover, testified that "[a] piece of mail is considered mailed – typically by the time we actually process the paperwork. … So it's actually at our facility is when it's considered mailed." 4/17/24 Trial Tr. 170:10–13, 16–20 (Waters). And the challenged provision of SB 202 turns on the mailing date, not the date on which Plaintiffs' mailings are received by voters. O.C.G.A. § 21-2-381(a)(3)(A).

180. To make the printing and mailing processes as cost-efficient as possible, Plaintiffs' mailers for all states to which they send mailers are batched together. Trial Tr. 4.16AM 37:5-9 (Hesla).

RESPONSE: No response, other than to note that the trial record confirms that other companies, like Arena, can handle Plaintiffs' printing tasks within SB 202's timing requirements. 4/17/24 Trial Tr. 172:4–173:14 (Waters).

181. Ms. Hesla testified that, if Plaintiffs were to print their Georgia mailers as a separate project, the cost of printing and mailing would significantly increase. Trial Tr. 4.16AM 37:11-18 (Hesla). For example, if Plaintiffs' Georgia mailers represented one million pieces out of ten million pieces of mail printed and mailed as a batch, the cost for each Georgia mailer would be about 21 cents. *Id.* at 37:19-38:1 (Hesla). If the one million Georgia mailers were printed and mailed as a separate project, the cost for each Georgia mailer would be about 30 cents—i.e., approximately a third higher. *Id.*

RESPONSE: Ms. Hesla testified that "[i]t would significantly increase the cost, you know, if you were to do just the state of Georgia by itself" because of a bulk discount for a large mailing of, for example, 10 million. 4/16/24 Trial Tr. 37:13–38:3 (Hesla). She did not testify why, or even if, Plaintiffs would have to print Georgia mailers entirely separately from other states.

182. The cost of postage would also increase if Plaintiffs printed their Georgia mailers separately. *Id.* at 38:2-3 (Hesla). Plaintiffs attempt to minimize postage costs in order to engage with as many underrepresented persons as possible. Trial Tr. 4.15PM 152:19-24 (Lopach).

RESPONSE: Ms. Hesla testified that "[i]t would significantly increase the cost, you know, if you were to do just the state of Georgia by itself" because of a bulk discount for a large mailing of, for example, 10 million. 4/16/24 Trial

Tr. 37:13–38:3 (Hesla). She did not testify why, or even if, Plaintiffs would have to purchase postage for Georgia entirely separately from other states.

183. Thus, if Plaintiffs had a set budget to spend on a given project, printing and mailing Georgia mailers separately from other targeted states would force Plaintiffs to communicate with fewer voters overall, to communicate with fewer voters in Georgia in particular, or to alter their message to Georgia voters. Trial Tr. 4.16AM 38:4-10 (Hesla).

RESPONSE: Ms. Hesla testified that this would be the case, albeit only for the union printers with which Mission Control exclusively works. The effects of Plaintiffs' decision to use only union printers cannot fairly be attributed to SB 202.

184. Ms. Hesla testified that undertaking the Georgia mailers as a separate project would not necessarily shorten the time required to create and upload the data suppression file, print the Georgia absentee ballot application mailers, and send them to voters because the printing and mailing process would entail all the same steps. Trial Tr. 4.16AM 38:12-25, 39:15-22 (Hesla).

RESPONSE: Ms. Hesla testified that "you still have a lot of the same processes," but did not say it would entail all the same steps. 4/16/24 Trial Tr. 38:23–24 (Hesla). At the same time, Ms. Hesla testified that some aspects of the process would be shorter, while also wondering whether there would be

"any time savings in terms of their ability to turn that file around." 4/16/24 Trial Tr. 39:15–22 (Hesla).

185. Over years of running absentee voting programming, Plaintiffs have taken steps to improve the efficacy and efficiency of their program in response to feedback from election administrators, Trial Tr. 4.15PM 259:10-12 (Lopach), and based on internal testing and data analysis. *See infra* § VI.F.3.

RESPONSE: Mr. Lopach testified that they took steps "to try and improve our vote by mail program," but the cited testimony does not address efficacy or efficiency. 4/15/24 Trial Tr. 259:10–12 (Lopach).

186. In 2018, Plaintiffs sent a little under 13 million absentee ballot application mailers nationally, and 950,000 absentee ballot application mailers in Georgia. Trial Tr. 4.15AM 69:8-16 (Lopach).

RESPONSE: The 950,000 Georgia mailers were sent in two waves. 4/15/24 Trial Tr. 69:15–16 (Lopach).

187. In 2020, Plaintiffs sent about 83 million absentee ballot application mailers nationally over five waves. Trial Tr. 4.15AM 69:20-22 (Lopach). Plaintiffs sent more waves of mailers for the 2020 election cycle than they had ever sent before. Trial Tr. 4.15AM 70:21-71:1 (Lopach).

RESPONSE: Plaintiffs sent a selected subset of Georgia voters "seven waves [of mailers] over the course of the three elections" in 2020. 4/15/24 Trial Tr. 70:22–23 (Lopach).

188. For the 2020 election cycle in Georgia (primary, general, and runoff), Plaintiffs sent 9.6 million absentee ballot application mailers over seven waves. Trial Tr. 4.15AM 69:22-23, 70:22-23 (Lopach). During the primary, Plaintiffs sent a test mailing to assess which messages were effective at conveying absentee voting as a feasible option. *Id*. at 70:7-10 (Lopach); Pls. Ex. 36 ("VPC and CVI also completed large-scale testing to understand which audiences are most responsive to which tactics and strategies—because with COVID-19 changing voting behavior, it is vitally important to reevaluate to this particular moment.")

RESPONSE: No response.

189. Plaintiffs' mailers resulted in 550,000 Georgians submitting absentee ballot applications for the 2020 general election, and 88,500 Georgians doing so for the January 2021 runoff election. Trial Tr. 4.15AM 69:24-70:1 (Lopach).

RESPONSE: No response.

190. Plaintiffs increased their absentee voting programming during the 2020 election cycle to ensure that every voter had the ability to participate in the election without fear for their health and safety due to the COVID-19

pandemic. Trial Tr. 4.15AM 68:18-69:2 (Lopach). Mr. Lopach explained that "[i]n a normal election cycle, there would be different strategies for reaching and mobilizing frequent voters on a chosen scale" but that in 2020 it was important to help "voters with little or no experience with voting by mail to navigate the new reality." Pls. Ex. 36 at 2.

RESPONSE: This paragraph underscores that Plaintiffs' conduct is about minimizing transaction costs—not speech. And Dr. Grimmer's uncontradicted expert testimony was that "transaction cost is a completely different framework that doesn't have anything to do with how voters interpret what prefilling means and instead it's just about reducing the cost to that voter." 4/17/24 Trial Tr. 125:5–17 (Grimmer).

191. Upon review of their 2020 programming, Plaintiffs found that three waves of absentee ballot application mailers are increasingly effective at conveying their pro-absentee voting message, but that additional waves have diminishing returns. Trial Tr. 4.15AM 69:3-7, 88:7-9 (Lopach); Pls. Ex. 66.

RESPONSE: None of these citations shows that Plaintiffs conveyed a message through the applications they mailed. As their expert testified, their conduct was about minimizing transaction costs. 4/16/24 Trial Tr. 80:6–8 (Green); *compare* 4/15/24 Trial Tr. 69:3–7 (Lopach) ("We learned that three waves had a marginal increase and impact."); *id.* at 88:6–9 (Lopach) ("we left no stone unturned encouraging voters to sign up to vote by mail"); Pls.' Ex. 66

(same). Any message was contained in other parts of the mailing, rather than the absentee-ballot application. 4/15/24 Trial Tr. 234:2–4 (Lopach).

192. Despite finding that three waves of absentee ballot application mailers would be effective, for the 2022 election, Plaintiffs nevertheless decided to send only two waves of mailers where they were running absentee voting programming (other than Georgia), in order to be responsive to election administrators and remove those who responded to the first wave from the second wave's mailing list. Trial Tr. 4.15AM 71:8-20, 83:25-84:5, 84:16-17, 88:17-89:3 (Lopach); Trial Tr. 4.15PM 127:20-128:3 (Lopach).

RESPONSE: Mr. Lopach's testimony was that three waves "created a marginal increase in vote-by-mail application," 4/15/24 Trial Tr. 71:8–9 (Lopach), and that the decision "to only send two waves subsequent to 2020 even though we know three waves is impactful" was a "business decision," because Plaintiffs learned "that we couldn't fit three waves in that time period and still effectively remove respondents to the first wave." 4/15/24 Trial Tr. 71:16–20 (Lopach). Mr. Lopach later clarified: "[W[e only send two waves now because we heard from election administrators that there was a desire for us to remove as many people as possible from a second wave who responded to a first wave." 4/15/24 Trial Tr. 84:1–5 (Lopach); *see also id.* at 88:24–89:3 (Lopach) ("as we engaged with election administrators and looked at data management timelines and mailing timelines, we found that three waves was

not manageable if we wanted to remove respondents from wave one before wave two and if we wanted to be good partners to election administrators").

193. Plaintiffs did not send a second wave of absentee ballot application mailers in Georgia after the passage of SB 202. Trial Tr. 4:15AM 84:21-85:3 (Lopach); Trial Tr. 4:15PM 146:7-17 (Lopach). Instead, Plaintiffs sent a standalone letter referring recipients back to the first absentee ballot application mailer. Pls. Ex. 318; Trial Tr. 4.15PM 158:4-6 (Lopach). Because this letter could not be accompanied by an application due to the risk of fines, Pls. Ex. 318; Trial Tr. 4.15AM 85:1-3 (Lopach); Trial Tr. 4.15PM 149:14-18 (Lopach), it had no reason to include a reply device with a unique barcode and therefore had no way to track whether the recipient took any action upon receipt of this letter. Pls. Ex. 318; Trial Tr. 4.15PM 157:25-158:1 (Lopach).

RESPONSE: The cited evidence shows only that Plaintiffs *believed* there was a risk of fines. It does not establish that there was indeed such a risk, particularly given SB 202's safe-harbor provision. And it says nothing about why a reply device was not included Plaintiffs' mailings.

194. Plaintiffs also did not prefill the absentee ballot applications included with their mailers sent to Georgia voters in 2022 because of SB 202. *See* Pls. Exs. 313, 319, 320, 321; Trial Tr. 4.15AM 84:17-19 (Lopach); Trial Tr. 4.15PM 127:22-24, 153:12-14 (Lopach).

RESPONSE: No response.

195. For the 2022 elections in Georgia, VPC sent 1,006,798 mailers and received 31,429 responses. Pls. Ex. 42; Trial Tr. 4.15PM 155:11-14 (Lopach). CVI sent 198,364 mailers and received 9,563 responses. Pls. Ex. 41; Trial Tr. 4.15PM 160:3-8 (Lopach). Both organizations sent mailers to arrive as close as possible to the beginning of the window to request an absentee ballot in Georgia. Trial Tr. 4.15PM 155:23-156:1 (Lopach).

RESPONSE: No response.

196. Plaintiffs continued to receive responses to their August mailers over the course of nine weeks, with the bulk of them occurring within the first two weeks. Trial Tr. 4.15PM 156:12 (Lopach); *see* Pls. Exs. 41, 42.

RESPONSE: No response.

197. Overall, Georgia's response rate to Plaintiffs' mailers was slightly below the national average when compared to the first wave of mailers sent in the rest of the states where Plaintiffs ran their absentee voting program. Trial Tr. 4.15PM 158:18-22 (Lopach). In the other states where Plaintiffs sent a second wave, they observed an increased number of absentee ballot applicants. *Id.* A second wave can include voters that were not included in the first wave. *Infra* ¶ 40; Trial Tr. 4.15PM 157:8-14 (Lopach).

RESPONSE: Mr. Lopach testified that "a one percent response rate to direct mail was considered successful." 4/15/24 Trial Tr. 62:11–13 (Lopach). In

2022, VPC had a 3.12% response rate, Pls.' Ex. 42, and CVI had a 4.82% response rate, Pls.' Ex. 41.

198. The Court finds that Plaintiffs' mailers convey a message to each recipient. The overarching message is that Plaintiffs want the particular recipient to participate in the democratic process. Trial Tr. 4.15AM 67:3-9 (Lopach), and that their participation in elections is important. *Id.* at 68:5-6 (Lopach).

RESPONSE: Any expressive messages in the mailer are not found in the application. Mr. Lopach testified that Plaintiffs would never send only an application because it would be confusing. 4/15/24 Trial Tr. 233:9–17 (Lopach). His testimony shows that the applications were about lowering transaction costs, not about sending a message. In Mr. Lopach's words, Plaintiffs' "messages are on the carrier envelope and in the cover letter." *Id.* at 234:2–4. And merely intending to send a message is not sufficient to constitute speech. *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004). A message must also be perceived as such. *Id.*

199. The mailer as a whole—and each component of the mailer—work to convey this message. *Id.* at 67:12-15 (Lopach); Trial Tr. 4.16AM 6:2-8 (Hesla). The carrier envelope, cover letter, personalized application (pre-SB 202), and return envelope, all are addressed to the specific recipient and say this specific recipient should engage in the democratic process by using

Plaintiffs' absentee ballot application package. Trial Tr. 4.15AM 67:16-68:1, 78:1-5 (Lopach). "The elements of the package are tailormade for the individual [Plaintiffs] are addressing," which "speak[] to [its] exclusive nature." *Id.* at 78:16-18 (Lopach). Plaintiffs "view the whole package as the most effective way to communicate [their] message." Trial Tr. 4.15PM 233:20-21 (Lopach).

RESPONSE: Same response as to paragraph 198.

200. Brandon Waters similarly testified that a purpose of sending absentee ballot application mailers is to "encourage people to vote who might otherwise not." Trial Tr. 4.17PM 178:20-24 (Waters).

RESPONSE: Same response as to paragraph 198. Moreover, Mr. Waters's testimony highlights that sending the application is intended to be a tool to lower transaction costs.

201. The Court finds that the carrier envelope conveys the message, to "vote at home," tells the recipient what is inside the envelope, and says "please don't discard . . . open it and read [the] letter and fill out the application." Trial Tr. 4:15PM 234:1-8 (Trent); *see also id.* at 129:6-11 (Lopach).

RESPONSE: Mr. Lopach testified that "the messages are either on the carrier envelope – some of the messages are on the carrier envelope and in the cover letter." 4/15/24 Trial Tr. 233:22–234:8 (Lopach). Moreover, State Defendants' counsel's question was about what Plaintiffs hoped would happen

as a result of asking on the envelope not to discard it, and the full question from counsel was: "Because on the carrier envelope it'll ask them, Hey, by the way, this is what's inside, please don't discard, *because you want them to* open it and read your letter and fill out the application?" 4/15/24 Trial Tr. 234:5–8 (Lopach) (emphasis added). Plaintiffs' omission of the italicized language falsely makes it appears that this statement supports Plaintiffs' point, when in fact it does not.

202. The Court finds that the cover letter is meant to convey the message that Plaintiffs are inviting the specific voter to consider voting absentee and are providing an absentee ballot application to make it easy to do so. Trial Tr. 4.15AM 93:13-16 (Lopach); *see also* Trial Tr. 4.15PM 233:22-25 (Trent). The cover letter always highlights that an absentee ballot application is enclosed to encourage the recipient to engage with all parts of the mailing. *Id.* at 138:1-5 (Lopach).

RESPONSE: The cited testimony from Mr. Lopach shows that any message is not from the absentee-ballot application, which is only meant to facilitate conduct: "We want the recipient to know we are specifically speaking to them and telling them that we are inviting them to consider voting by mail *and that we have provided a voting-by-mail form*, which is easy." 4/15/24 Trial Tr. 93:13–16 (Lopach) (emphasis added). Plaintiffs have mailed cover letters that omitted an application. But they would never send an application without

a cover letter because it would be confusing. 4/15/24 Trial Tr. 233:9–17 (Lopach).

203. Mr. Lopach testified that, by including an absentee ballot application in their mailer, Plaintiffs are communicating:

> [W]e believe it is so important for you to consider voting by mail that we've provided an application with your name and address, we are speaking to [you] and we are saying to [you], this form is specifically for you and it is so important that we filled out and begun the process of completing this application for you.

Trial Tr. 4.15AM 101:5-10; 78:18-23.

RESPONSE: Mr. Lopach's testimony shows that any message is not from the application, which is only meant to facilitate conduct: "We want the recipient to know we are specifically speaking to them and telling them that we are inviting them to consider voting by mail *and that we have provided a voting-by-mail form*, which is easy." 4/15/24 Trial Tr. 93:13–16 (Lopach) (emphasis added). Plaintiffs have sent envelopes with cover letters that omitted an application. But they would never send an application without a cover letter because it would be confusing. 4/15/24 Trial Tr. 233:9–17 (Lopach).

204. Plaintiffs have found that including an application in their mailers produces "a statistically significant increase in ballot returns," *Id.* at 75:8-11 (Lopach), and that this is true even when Plaintiffs are "[m]ailing voters who [also] receive official application forms" from their state or county elections office. Pls. Ex. 36 at 2. Thus, Plaintiffs concluded that including

applications in their mailers, even when it is a second application mailing "is a necessary for a comprehensive [absentee voting] program." *Id.*

RESPONSE: SB 202 does not affect Plaintiffs' ability to include an absentee-ballot application in their mailers, and this proposed finding of fact does not address *prefilled* applications. Additionally, a higher response rate does not mean that Plaintiffs were sending a message or that any message was understood. As Dr. Grimmer explained in his uncontradicted expert testimony: The "transaction cost is a completely different framework that doesn't have anything to do with how voters interpret what prefilling means and instead it's just about reducing the cost to that voter." 4/17/24 Trial Tr. 125:5–17 (Grimmer); *see also* 4/16/24 Trial Tr. 80:6–8 (Green).

205. In Plaintiffs' experience, including an application in their mailers is superior to what is called "transmodal" communications, in which an individual is mailed a letter directing them to visit a website to download and print an absentee ballot application. Trial Tr. 4.16AM 23:13-24:3 (Hesla). Plaintiffs have found that directing individuals from one mode (e.g., mail) to another (e.g., a website) causes attrition—that is, recipients are less likely to complete the application process. *Id.* Some voters, including many of those that Plaintiffs serve, do not have a printer or internet access such that a transmodal communication leaves them unable to act on Plaintiffs' message. Trial Tr. 4.15AM 60:1, 66:19-67:2 (Lopach).

RESPONSE: Same as response to paragraph 204. In addition, the cited language is not about Plaintiffs' experience, but rather about Mission Control's purported experience. Moreover, SB 202 still allows Plaintiffs to send a blank application to any voter who has not already requested an absentee ballot.

206. Mr. Lopach further testified that including a pre-addressed postage-paid return envelope conveys to the recipient:

> [W]e are specifically asking you to engage with vote by mail and we want to make it as easy as possible. Your participation in our election is important to us, such that we are paying for an envelope, we are paying for postage and helping you to return this form correctly to the county elections office.

Id. at 98:22-99-2 (Lopach).

RESPONSE: Mr. Lopach's testimony shows that the applications were about lowering transaction costs, not intending to send a message: "we want to make it as easy as possible." 4/15/24 Trial Tr. 98:22–99:2 (Lopach). The pre-paid envelope and the application are about facilitating conduct, not sending a message.

207. Plaintiffs' findings about the efficacy of sending absentee ballot applications and providing the tools for voters to submit the application, are supported by the concept of transaction costs, a concept which is generally accepted in the social sciences. Trial Tr. 4.16AM 77:22-24 (Green). Dr. Green testified during trial that "transaction costs refer to the frictions

that occur when a person has to expend effort, time, [and] mental energy engaging in some kind of action or decision." *Id.* at 75:21-23 (Green); *see also* Pls. Ex. 28. Further, he testified that a "behavioral threshold" corresponds to "the idea that you might have an underlying latent propensity to engage in a given behavior, but until you cross some threshold, you don't actually take the behavior." *Id.* at 75:25-76:3 (Green). Thus, "the larger the transaction cost, the more difficult it is to get over the [behavioral] threshold," and "when you expose somebody to something that is effortful or tedious or prone to distraction, they're just much less likely to follow through." *Id.* at 77:13-17 (Green). Conversely, reducing transaction costs makes people "more likely to engage in the behavior." *Id.* at 77:20-21 (Green); *see also* Pls. Ex. 28. Dr. Green agrees with the statement that "very broadly, there are no exceptions to the contention that reducing transaction costs promote the intended behavior." *Id.* at 96:18-20 (Green).

RESPONSE: Dr. Green's opinions should not be given any weight for the reasons explained in State Defendants' Motion to Exclude Green [Doc. 187]. Additionally, this specific testimony, as Dr. Grimmer testified without contradiction, "is a completely different framework that doesn't have anything to do with how voters interpret what prefilling means and instead it's just about reducing the cost to that voter." 4/17/24 Trial Tr. 125:5–17 (Grimmer). And Dr. Green's own paper included a graph of studies showing

that "sending out multiple pieces of mail could actually discourage" voting. 4/17/24 Trial Tr. 131:17–20 (Grimmer); Donald P. Green & Adam Zelizer, *How Much GOTV Mail is Too Much? Results from a Large-Scale Field Experiment*, 4 J. Experimental Pol. Sci. 107, 114 (2017) (Pls.' Ex. 138).

208. Dr. Green testified that voting requires a series of actions, which are subject to transaction costs and require mental energy, effort, and time. *Id.* at 78:3-9 (Green); *see also* Pls. Ex. 28. Thus, an organization that aims to increase electoral participation would also aim to reduce transaction costs for voters. *Id.* at 78:22-79:1, 79:17-20 (Green); *see also* Pls. Ex. 28.

RESPONSE: Same response as to paragraph 207.

209. Dr. Green testified that transaction costs associated with absentee voting can include obtaining the application form, filling it out, and mailing it in, which an organization aiming to increase the rate of absentee voting would attempt to reduce. Trial Tr. 4.16AM 79:21-80:5 (Green); *see also* Pls. Ex. 28. Thus, sending an individual a physical application form reduces the transaction costs of voting absentee because voters "do not have to go get [the application form], making them one step closer to completing the process." *Id.* at 80:6-12 (Green); *see also* Pls. Ex. 28. Sending voters a return envelope, and specifically one that does not require postage, and providing additional instructions or information about the absentee voting process are additional

ways to reduce transaction costs associated with absentee voting. *Id.* at 85:10-18 (Green).

RESPONSE: Same response as to paragraph 207.

210. Defendants' expert witness, Dr. Justin Grimmer, similarly testified that transaction costs can include financial costs, time, energy, or knowledge such that reducing those can result in a positive effect on absentee voting or overall voter turnout. Trial Tr. 4.17PM 134:9-17; 149:18-150:1 (Grimmer).

RESPONSE: Dr. Grimmer did not testify that such things can result in a positive effect. Instead, he testified that "*even if* we were to think there were some positive effect … [the transaction cost framework provides] an alternative explanation to suggest it has nothing to do with inferring some meaning or message from receiving those multiple applications. And instead, it could just be about reducing the cost." 4/17/24 Trial Tr. 134:9–17 (Grimmer) (emphasis added).

211. Dr. Green testified that there exists an "extensive literature using randomized trials to evaluate the effectiveness of voter mobilization tactics going back decades," which "shows again and again" that direct mail approaches to voter participation have "a well-documented positive effect" that while "not large," are "large enough to be materially substantial." Trial Tr. 4.16AM 80:16-21; 87:1-4 (Green).

RESPONSE: Same response as to paragraph 207.

212. Dr. Green's conclusion is supported by a 2017 study conducted in Maine, entitled *Voter Mobilization Meets Government: Turnout and Voting by Mail from Online or Paper Ballot Request* by Christopher Mann & Genevieve Mayhew, in which a control group received no mailings, a second group received a mailing that encouraged them to go to a government website to begin the process to cast a ballot, and a third group received a mailing that "provide[d] them the ballot request." *Id.* at 82:17-24 (Green); *see also* Pls. Ex. 28. This experiment found that while effects of directing individuals to a government website to request an absolute ballot had "small" results, the physical mailing with the absentee ballot request form was "more effective." Trial Tr. 4.16AM 83:9-12 (Green); *see also* Pls. Ex. 28.

RESPONSE: Dr. Green's opinions should not be given any weight for the reasons explained in State Defendants' Motion to Exclude Green [Doc. 187]. Additionally, this testimony is not relevant as Plaintiffs may still send an absentee-ballot application to any voter who has not yet requested an absentee ballot. Moreover, the Mann & Mayhew study referenced here does not support Dr. Green's testimony. As Dr. Grimmer noted in his Expert Report, Dr. Green "fails to note that the 'lower transaction cost' option (the paper ballot) does not cause a statistically significant increase in voter turnout." Defs.' Ex. 1, ¶ 45. And, "while receiving an absentee ballot application may

cause individuals to increase the use of absentee ballots, it also causes a decrease in early voting and voting on election day. Again, given the decreased prevalence of Covid-19 there is no longer an obvious, compelling reason to prioritize voting via absentee ballots over in-person voting." *Id.*

213. Dr. Green's conclusion is also supported by a 2020 study entitled *The Participatory and Partisan Impacts of Mandatory Vote-by-Mail* by Michael Barber and John Holbein, which examined "voter registration and voter turnout files" to determine "the extent to which the adoption of vote by mail rules . . . led to increases in voter turnout" in counties in Utah and Washington. Trial Tr. 4.16AM 81:15-21 (Green); *see also* Pls. Ex. 28. This study found that "the adoption of vote by mail rules in counties . . . led to a detectable increase in turnout," with "no shift in . . . vote margins for Republicans or Democrats." Trial Tr. 4.16AM 82:1-5 (Green).

RESPONSE: Georgia law provides no-excuse absentee voting, and this proposed finding of fact is not relevant to any of the claims at issue in this litigation. Neither challenged provision restricts voting by mail. Moreover, Dr. Green testified that this study's methodology was "fairly reliable," but it wasn't "as good as a randomized trial." 4/16/24 Trial Tr. 82:9–14 (Green). He points to Mann & Mayhew as the randomized trial. 4/16/24 Trial Tr. 82:15–18 (Green). That study does not show what Dr. Green claims it shows, as described in State Defendants' response to Plaintiffs' Proposed FOF ¶ 212. And Dr. Grimmer

testified without contradiction that the transaction cost analysis Dr. Green employs here "is a completely different framework that doesn't have anything to do with how voters interpret what prefilling means and instead it's just about reducing the cost to that voter." 4/17/24 Trial Tr. 125:5–17, 134:4–21 (Grimmer).

214. Notably, Plaintiffs themselves have found that their absentee voting programs increase participation. Pls. Ex. 36 ("VPC and CVI have run VBM programs for the past 16 years and consistently found that they increase total turnout and do not simply shift voters from Election Day to mail voting, and this is true in the era of COVID."). Increasing participation furthers Plaintiffs' mission to engage underrepresented populations in the electorate in the democratic process. *See* Trial Tr. 4.15 PM 186:14-17 (Lopach). Dr. Green confirmed Plaintiffs' finding, testifying that "the literature suggests that increasing absentee voting leads to an increase in overall turnout." Trial Tr. 4.16AM 84:9-12 (Green). The Mann & Mayhew study found that receipt of an absentee ballot request form led not only to "an increase in absentee voting" but also to "an increase in turnout overall." *Id.* at 84:14-23 (Green).

RESPONSE: First, Dr. Green's opinions should not be given any weight for the reasons explained in the State Defendants' Motion to Exclude Green. Dr. Grimmer explained at length (and without contradiction) why Dr. Green's reliance on the Mann & Mayhew study is misplaced. *See* Defs.' Ex. 1 at 26

(Grimmer Rpt.). As Dr. Grimmer noted without contradiction, Dr. Green "fails to note that the 'lower transaction cost' option (the paper ballot) does not cause a statistically significant increase in voter turnout." Defs.' Ex. 1 at 26. And, "while receiving an absentee ballot application may cause individuals to increase the use of absentee ballots, it also causes a decrease in early voting and voting on election day. Again, given the decreased prevalence of Covid-19 there is no longer an obvious, compelling reason to prioritize voting via absentee ballots over in-person voting." *Id.*

Second, Plaintiffs may still send absentee-ballot applications to all voters who have not yet requested an absentee ballot. And Georgia's robust no-excuse absentee voting rules allow for broad participation in absentee voting. Nothing prevents Plaintiffs from conducting their absentee voting programs, which do not depend on prefilling. Plaintiffs have not studied the efficacy of prefilling since 2006, when they determined it increased participation by a mere 0.5%. 4/15/24 Trial Tr. 256:14–21, 258:3–4 (Lopach). Nor, according to the evidence, do Plaintiffs' efforts depend on sending duplicate applications. Dr. Green's own research shows that "sending out multiple pieces of mail could actually discourage" voting. 4/17/24 Trial Tr. 131:17–20 (Grimmer); Green & Zelizer, *supra,* at 114 (Pls.' Ex. 138).

215. Plaintiffs prefill as much voter information as possible to "make it easier for the recipient to engage with the document," noting that many

recipients will not have the same levels of literacy, English proficiency, or ability to engage with a small print multi-box document. Trial Tr. 4.15AM 97:6-12 (Lopach). Plaintiffs described that a person with a disability would have an easier time filling out a prefilled form, *Id.* at 97:17-19 (Lopach), and that someone with difficulty reading or a lower English proficiency will "connect with the [prefilled] document in a way they may not otherwise," *Id.* at 97:20-23 (Lopach).

RESPONSE: Mr. Lopach's testimony is based solely on his own perception. No voter testified that they felt connected with a prefilled document. Additionally, this testimony should not be given any weight because it is illogical that a voter "with a disability" or with "lower English proficiency" will better understand a form that still requires voters to complete several sections on their own.

216. Mr. Lopach testified that Plaintiffs prefill the applications they send in order to communicate to the recipient, "we are speaking to you. This form is for you," and to invite the recipient to engage with the form. Trial Tr. 4.15AM 97:13-16 (Lopach). By sending prefilled applications Plaintiffs specifically invite the recipient to vote absentee and convey their message that it is important for the specific recipient to vote, and they can do so by voting via absentee ballot. *Id.* at 99:5-8 (Lopach). Prefilling the application

fundamentally conveys that Plaintiffs "want [the recipient] to engage with this document." Trial Tr. 4.15PM 256:4-5 (Lopach).

RESPONSE: The evidence shows that prefilling is not about expression, but about lowering transaction costs to facilitate conduct: "We prefill as much information as possible to make it easier for the recipient to engage with the document." 4/15/24 Trial Tr. 97:6–7 (Lopach). Any "expressive component" an application package might have "is not created by the conduct itself but by the included cover information[.]" [Doc. 131 at 26]; *see Rumsfeld v. F. Acad. & Inst'l Rts., Inc.*, 547 U.S. 47, 66 (2006). The carrier envelope, the return envelope, and the cover letter already include the intended recipients' personal information. 4/15/24 Trial Tr. 128:13–129:3, 132:4–9 (Lopach). Thus, any personal "invit[ation]" is found in those materials, not the application.

217. Brandon Waters similarly testified that their clients prefill absentee ballot applications "because that mailer has been targeted to that individual," Trial Tr. 4.17PM 192:5-9 (Waters), and that some of their clients also believe that prefilling can increase the effectiveness of their message. *Id.* at 175:18-22 (Waters).

RESPONSE: This quotation is Plaintiffs' counsel's question, not Mr. Waters' testimony. Mr. Waters testified that: "If you're mailing to a specific address, you're sending it to a specific person." 4/17/24 Trial Tr. 192:5–13 (Waters). He also testified that, although "[s]ome of our clients believe that it

is more effective to prefill them," in his experience "[t]ypically there hasn't been much of a difference. Sometimes even fewer people return the prefilled applications in some of the more recent studies we've done." 4/17/24 Trial. Tr. 175:11–22 (Waters). Viewed in its full context, this exchange does not support this proposed finding.

218. Ultimately, Plaintiffs prefill the absentee ballot application because they believe it increases the effectiveness of their message. Trial Tr. 4.15AM 79:12- 14 (Lopach). Prefilling provides "an exclusive voter experience," Pls. Ex. 36, leads to increased response rates, Trial Tr. 4.15AM 80:16-22 (Lopach), and can increase participation in elections by half a percent. Trial Tr. 4.15AM 68:11-12 (Lopach); Trial Tr. 4.15PM 256:14-18 (Lopach).

RESPONSE: The trial record confirms that prefilling is about lowering transaction costs and facilitating conduct, not sending a message. The 0.5% figure is based on an internal study conducted in 2006, and Plaintiffs are "not certain that any tests were or were not run since 2006 on prefilling of vote by mail applications." 4/15/24 Trial Tr. 256:14–21, 258:3–4 (Lopach).

219. Additionally, prefilling an absentee ballot application can help election administration by allowing the election administrator to easily match the application to the state voter file and to easily decipher the voter's information rather than read the voter's handwriting. Trial Tr. 4.15AM 81:24-82:7 (Lopach); *see also* Trial Tr. 4.18AM 61:21-62:17 (Evans) (testifying that,

in such cases where a voter's name and address had not in fact changed, prefilling an application with the information listed for a voter in the voter file could be "helpful" for the voter); Pls. Ex. 15.

RESPONSE: Plaintiffs misrepresent Mr. Evans's testimony, which was: "[I]f you set aside the issues with [prefilling], then it would be okay, but you can't set those aside." 4/18/24 Trial Tr. 62:15–16 (Evans). And, even if some portions of the application were prefilled, other portions would still need to be handwritten, which would need to be reviewed. Considering the complaints received from counties, there is no evidence that Plaintiffs' actions were helping county officials. *See, e.g.*, 4/18/24 Trial Tr. 88:12–20 (Evans).

220. Like Plaintiffs, Mr. Waters also testified that Arena sometimes prefills applications to reduce the error rate by ensuring that a voter's information on the application matches the voter file and that the election official can read the application. Trial Tr. 4.17PM 174:22-175:10 (Waters).

RESPONSE: No response.

221. Plaintiffs' use of prefilling is supported by expert testimony. Dr. Green testified that the "prefilling of forms with a recipient's information" is "a common practice in political mail," "in places where it's allowed." Trial Tr. 4.16AM 92:25-93:5 (Green). In particular, Dr. Green testified that in order to promote absentee voting, organizations also reduce transaction costs for voters by sending the voter multiple reminders or sending them forms that

are easier to complete, such as prefilled ones. *Id.* at 85:5-9; 85:19-22 (Green). And while it is more expensive to prefill, organizations do so because "they sense, correctly, that it's much more likely to actually be acted on by the recipient." *Id.* at 93:6-9 (Green); *see also* Pls. Ex. 28.

RESPONSE: Dr. Green's opinions should not be given any weight for the reasons explained in State Defendants' Motion to Exclude Green [Doc. 187]. Moreover, Dr. Grimmer explained without contradiction that Dr. Green's assertion that prefilled absentee-ballot applications are more effective is based on a single study by Professor Hans Hassell; that Dr. Green's incorrect description of that study was a "material error"; and that in fact "there was no statistically significant difference in either the rate at which individuals voted absentee or overall turnout." 4/17/24 Trial Tr. 108:25–112:11 (Grimmer).

222. In fact, Dr. Green testified that sending a voter a prefilled absentee ballot application is "likely to raise their likelihood to engage in this behavior by a percentage point or two." Trial Tr. 4.16AM 94:6-15 (Green); *see also* Pls. Exs. 28, 30. Therefore prefilling is "more likely to be effective in getting people to vote," and consequently "requir[es] fewer rounds of such mailings because you can get people to act the first time." Trial Tr. 4.16AM 94:16-20 (Green).

RESPONSE: Dr. Green's opinions should not be given any weight for the reasons explained in State Defendants' Motion to Exclude Green

[Doc. 187]. Moreover, Dr. Green did not cite any support for his "percentage point or two" figure. And Dr. Grimmer testified without contradiction that Dr. Green's assertion that prefilled absentee-ballot applications are more effective is based on a single study by Professor Hans Hassell; that Dr. Green's incorrect description of that study was a "material error"; and that in fact "there was no statistically significant difference in either the rate at which individuals voted absentee or overall turnout." 4/17/24 Trial Tr. 108:25–112:11 (Grimmer).

223. Thus, Dr. Green testified that the prefilling prohibition will "make [Plaintiffs'] efforts less efficient," Trial Tr. 4.16AM 97:7-98:5 (Green), and Plaintiffs "would have to compensate [for not using prefilled forms] by sending an avalanche of mail." Trial Tr. 4.16AM 97:7-25 (Green); *see also* Pls. Ex. 28.

RESPONSE: Dr. Green's opinions should not be given any weight for the reasons explained in State Defendants' Motion to Exclude Green [Doc. 187]. Moreover, Dr. Grimmer testified without contradiction that Dr. Green's assertion that prefilled absentee-ballot applications are more effective is based on a single study by Professor Hans Hassell; that Dr. Green's incorrect description of that study was a "material error"; and that in fact "there was no statistically significant difference in either the rate at which individuals voted absentee or overall turnout." 4/17/24 Trial Tr. 108:25–112:11 (Grimmer). Dr. Grimmer also testified that Dr. Green's own paper included a graph of studies

showing that "sending out multiple pieces of mail could actually discourage" voting. 4/17/24 Trial Tr. 131:17–20 (Grimmer); Green & Zelizer, *supra,* at 114 (Pls.' Ex. 138).

224. Dr. Green's conclusions are based in part on a 2016 study entitled *Teaching Voters New Tricks: The Effect of Partisan Absentee Vote-by-Mail Get- Out-the-Vote Efforts* by Hans Hassel, which "analyzed the results of a randomized experiment conducted in Minnesota in collaboration with a Republican allied organization targeting Republicans and leaning Independents," in which one group received nothing, a second group received a "generic absentee ballot request," and a third group received a prepopulated absentee ballot request form. Trial Tr. 4.16AM 95:1-10 (Green); Pls. Ex. 88; *see also* Pls. Ex. 28. The principal finding of this study was that "voter turnout was moved scarcely at all by an unprefilled form, but substantially [with] a prefilled form," with a difference of "roughly 2.3 percentage points." Trial Tr. 4.16AM 95:12-18 (Green); Pls. Ex. 88; *see also* Pls. Ex. 30.

RESPONSE: Dr. Green's opinions should not be given any weight for the reasons explained in State Defendants' Motion to Exclude Green [Doc. 187]. Additionally, Plaintiffs failed to introduce Plaintiffs' Exhibit 88 (the Hassell study) at trial, and thus the Court should not consider it. Moreover, Dr. Grimmer testified without contradiction that Dr. Green's incorrect description of the Hassell study was a "material error" and that in fact "there

was no statistically significant difference in either the rate at which individuals voted absentee or overall turnout." 4/17/24 Trial Tr. 108:25–112:11 (Grimmer).

225. Dr. Green testified that based on his review of the Hassel study, his own research experience, and other literature in his field, in his expert opinion it is "more likely than not that prefilling an application results in a positive turnout increase." Trial Tr. 4.16AM 108:2-6 (Green); Pls. Ex. 88; see also Pls. Ex. 30. Dr. Grimmer similarly acknowledged there was a difference in absentee voting between groups that received a prefilled absentee ballot application and groups that did not receive a prefilled absentee ballot application. Trial Tr. 4.17PM 111:19-23 (Grimmer).

RESPONSE: Dr. Green's opinions should not be given any weight for the reasons explained in State Defendants' Motion to Exclude Green [Doc. 187]. Additionally, Plaintiffs failed to introduce Plaintiffs' Exhibit 88 (the Hassell study) at trial, and thus the Court should not consider it. Moreover, Dr. Grimmer testified without contradiction that Dr. Green's incorrect description of the Hassell study was a "material error" and that in fact "there was no statistically significant difference in either the rate at which individuals voted absentee or overall turnout." 4/17/24 Trial Tr. 108:25–112:11 (Grimmer).

226. Dr. Green also testified about the importance of personal interactions in boosting voter engagement and turnout. In a 2000 study conducted in New Haven, Connecticut by Dr. Green and Alan Gerber entitled The Effects of Canvassing, Telephone Calls, and Direct Mail on Voter Turnout: A Field Experiment, 30,000 targeted voters were assigned a "regimen" of various voter outreach "all in the spirit of encouraging voters to vote in a nonpartisan way." Trial Tr. 4.16AM 89:3-10 (Green). Based on this study Dr. Green testified that "personalized messages tend to work better" than non-personalized messages, perhaps because they are "a little bit more likely to get the attention of the recipient." Trial Tr. 4.16AM 92:6-13 (Green).

RESPONSE: Dr. Grimmer explained without contradiction that Gerber and Dr. Green's assessment of the experiment in the paper was that "they couldn't make a conclusion about there being real differences" and that "because we fail to reject the null, this is a suggestive difference" only, not a scientifically supported difference. 4/17/24 Trial Tr. 115:17–24 (Grimmer). Additionally, nothing in SB 202 prohibits Plaintiffs from sending "personalized messages" to Georgia voters.

227. Dr. Green also testified about the prevalence of prefilled forms in contexts outside of politics, including "taxation," "college scholarships," and online shopping, which are all employed for the same reasoning: prefilled forms reduce transaction costs and are more likely to encourage the recipient to

engage with the outreach. Trial Tr. 4.16AM 78:16-21, 94:1-3, 93:10-21 (Green); Pls. Ex. 30.

RESPONSE: As Plaintiffs acknowledge here, prefilled forms are about reducing transaction costs and facilitating conduct by encouraging engagement. They are not speech or expression.

228. Dr. Green explained in his expert report that aside from the additional convenience for voters, pre-filled absentee ballot applications have two additional advantages: (1) the prefilled information is the same information that "voters supplied when they registered to vote" and "has already been approved by election officials," eliminating the need to "adjudicate minor mismatches" between information provided on an absentee ballot application and that in the voter's registration record; and (2) "[e]lection officials are spared the task of deciphering handwriting." Pls. Ex. 28 at 9; *accord* Pls. Ex. 30.

RESPONSE: Same response as to paragraph 219.

229. The Court finds Dr. Green's testimony regarding the efficacy of prefilling credible and grants it substantial weight.

RESPONSE: Dr. Green's opinions should not be given any weight for the reasons explained in the preceding Responses as well as State Defendants' Motion to Exclude Green [Doc. 187].

230. Plaintiffs have found that "messaging matters" in generating responses and increasing turnout and consistently test the messages they send in their absentee ballot application mailers. *See* Pls. Ex. 36; Trial Tr. 4.15AM 71:24-72:14 (Lopach); Trial Tr. 4.15PM 129:13-14 (Lopach). Plaintiffs test "what messages [are] effective and . . . what messages [are] effective with which populations." Trial Tr. 4.15AM 72:3-5 (Lopach). The Court finds that Plaintiffs engage in message testing as part of their effort to most effectively convey their message in favor of absentee voting.

RESPONSE: All the tested messages were placed in the cover letter or on the carrier envelope. No testing on prefilling has occurred since 2006. 4/15/24 Trial Tr. 258:3–4 (Lopach). Moreover, these tests say nothing about whether voters perceived any message from prefilling specifically. And Plaintiffs presented no evidence from voters to support such a conclusion.

231. In their mailers, Plaintiffs will keep constant various parts of their messaging while changing others to see which pieces elicit different response rates. Trial Tr. 4.15PM 137:9-13, 234:23-235:2 (Lopach). Plaintiffs use various testing methods including A/B testing and randomized control testing, where they have a control group and treatment groups and send different messaging to the treatment groups, Pls. Ex. 36 at 3; Trial Tr. 4.15AM 65:8-20, 71:4-6, 76:4-15 (Lopach); Trial Tr. 4.15PM 245:6 (Lopach), as well as

focus groups and consumer survey groups. Trial Tr. 4.15PM 134:12-14 (Lopach).

RESPONSE: Same response as to paragraph 230.

232. Some of the messages Plaintiffs have tested are "reassurance," (reassuring recipients that local election officials make sure absentee voting is safe and secure), "virus," (acknowledging the COVID-19 pandemic but highlighting that it cannot take away a person's right to vote), "selected" (highlighting the voter was explicitly chosen to receive the application by mail), and "good citizen" (emphasizes that absentee voting can be considerate of others). Pls. Ex. 36. Plaintiffs have also used messaging to assure recipients that absentee mail ballots can be trusted, such as:

> Elections in Anytown are run by your neighbors. That means the people who receive and count ballots are members of your community who care about democracy and fairness, just like you!

Pls. Ex. 321; Trial Tr. 4.15PM 133:18-21 (Lopach). Plaintiffs have used this message because:

> [T]here's been significant discussion and debate about elections, about who runs elections, and are [the elections] valid. [Plaintiffs] wanted to convey to the recipient that elections are run by local folks who they know, who are just like them . . . and that this is a national discussion and [Plaintiffs are] inviting [the recipient] to be a part of the national discussion.

Trial Tr. 4.15PM 133:23-134:4 (Lopach); *accord* Trial Tr. 4.16PM 225:11-226:1, 265:2-8, 263:22-264:7, 271:16-272:19, 275:25-276:5 (Germany); Trial Tr. 4.17AM 65:8-11 (Watson).

RESPONSE: Same response as to paragraph 230.

233. The "[s]elected" messaging "calls attention to the fact that the voter was explicitly chosen to receive the application by mail" and emphasizes the prefilled absentee ballot application form. Trial Tr. 4.15AM 77:14-23 (Lopach). Messaging geared towards an exclusive voter experience resulted in a 11.7 percent response rate and was found to be a highly effective way to encourage voters to vote absentee. Trial Tr. 4.15AM 78:8-12 (Lopach); Pls. Ex. 36. Dr. Green testified that "authentic personal interaction" is very important for increasing voter mobilization, such that direct mail is "more effective" if it is "more personalized." Trial Tr. 4.16AM 91:6-19 (Green). Additionally, "other tactics" involving "social norms," such as "thanking people or shaming people," can also increase the effectiveness of voter mobilization mail. *Id.* at 90:3-5 (Green). This is supported by research, including Dr. Green's own research, finding that "telling people about their own voting record" is especially effective. Trial Tr. 4.16AM 91:6-19 (Green).

RESPONSE: Plaintiffs did not identify any evidence showing that the absentee-ballot application itself communicates any message. Instead,

Plaintiffs explained that *other parts* of the mailers communicate that: "We are speaking to you with an envelope addressed to you. We're speaking to you with a letter addressed to you talking about why, in the pandemic election, voting by mail was a safe way to engage with democracy, why voting by mail is convenient." 4/15/24 Trial Tr. 67:16–20 (Lopach). Each such message is found in the cover letter or on an envelope, not on the absentee-ballot application itself. Moreover, Dr. Green's testimony cited here does not involve prefilling applications. Instead, it involved a study in which voters were told in a letter either that their voting behavior would be studied through public records, what their voting record was, or that their neighbors would be informed if they did or did not vote. 4/17/24 Trial Tr. 116:25–117:15 (Grimmer).

234. Plaintiffs send multiple waves of mailers because they have found that multiple waves of mail more effectively convey their pro-voting message. Pls. Exs. 36, 66; see Trial Tr. 4.15 AM 69:4-7, 75:5-8 (Lopach).

RESPONSE: Nothing in SB 202 prevents Plaintiffs from sending multiple waves of mailers. Moreover, Dr. Green's own research included a graph of studies showing that "sending out multiple pieces of mail could actually discourage" voting. 4/17/24 Trial Tr. 131:17–20 (Grimmer); Green & Zelizer, *supra*, at 114 (Pls.' Ex. 138).

235. Dr. Green confirmed Plaintiffs' findings on this point, testifying that "with the proviso that eventually you reach diminishing returns,"

"sending an individual a piece of political direct mail more than once lead[s] to a greater increase in turnout than sending it just once." Trial Tr. 4.16AM 109:14-18 (Green). As with prefilling, the Court credits Dr. Green's testimony with respect to sending multiple waves of mailers and grants substantial weight to it.

RESPONSE: Dr. Green's opinions should not be given any weight for the reasons explained in the preceding Responses and in State Defendants' Motion to Exclude Green [Doc. 187]. Moreover, Dr. Green's own research showed that "sending out multiple pieces of mail could actually discourage" voting. 4/17/24 Trial Tr. 131:17–20 (Grimmer); Green & Zelizer, *supra,* at 114 (Pls.' Ex. 138).

236. Dr. Green based this conclusion on a 2017 study entitled *How Much GOTV is Too Much? Results from a Large-Scale Field Experiment* that Dr. Green and Adam Zelizer conducted in New Hampshire in advance of the 2014 election "in alliance with a pro-Republican group that wanted . . . to mobilize Republican women," and found that "increasing numbers of mailings led to increased voter turnout," although "eventually one reaches a point of diminishing returns." Trial Tr. 4.16AM 110:1-5, 111:11-24 (Green); *accord* Trial Tr. 4.16AM 111:11-24 (Green) (referencing a study of Democratic voters in Virginia with similar findings).

RESPONSE: Dr. Green's opinions should not be given any weight for the reasons explained in the preceding Responses and in State Defendants' Motion to Exclude Green [Doc. 187]. Additionally, the cited research included a graph of studies showing that "sending out multiple pieces of mail could actually discourage" voting. 4/17/24 Trial Tr. 131:17–20 (Grimmer); Green & Zelizer, *supra*, at 114 (Pls.' Ex. 138). Figure 2 shows that, in Connecticut, there was a negative treatment effect for two pieces of mail, then a sharp increase for four pieces, and then diminishing returns; in North Carolina "there's a negative effect of the mailing"; and in Virginia "the effect is essentially null throughout … regardless of how many pieces of mail are being delivered." 4/17/24 Trial Tr. 130:3–17 (Grimmer). Accordingly, Dr. Green's own paper shows "there's very different patterns in how voters respond [to] receiving many different pieces of mail." 4/17/24 Trial Tr. 130:18–20 (Grimmer). Considering these divergent conclusions, the Court should not credit Dr. Green's testimony on this point.

237. Based on these studies, Dr. Green concluded that if a "civic organization sends only one absentee ballot application mailer to a voter instead of multiple," that is a "less effective method of increasing voter turnout." Trial Tr. 4.16AM 111:25-112:4 (Green).

RESPONSE: Dr. Green's study shows that "sending out multiple pieces of mail could actually discourage" voters from voting. 4/17/24 Trial Tr. 131:17–

20 (Grimmer). His study does not support the statement in Plaintiffs' Proposed Finding.

238. Additionally, because the state's voter file changes throughout the voter registration period, additional waves of Plaintiffs' mailers also capture newly registered voters and recently moved voters. Trial Tr. 4.15AM 82:24-83:15 (Lopach).

RESPONSE: Nothing in SB 202 prevents Plaintiffs from sending mailers to newly registered voters or recently moved voters, so long as they do not send a ballot application to someone who has already requested one or prefill it.

239. Historically, absentee voting was a "fairly small part of Georgia elections" and counties administered elections based on that model. Trial Tr. 4.16PM 257:2-7 (Germany). In contrast, in 2020, there was "a knowledge that there was going to be . . . an extremely significant increase in the amount of absentee ballots" being cast for the 2020 elections. Trial Tr. 4.16PM 256:18-24 (Germany); Pls. Ex. 146.

RESPONSE: No response.

240. Mr. Evans testified that he believed 2020 was an unusual election cycle due to the COVID-19 pandemic. Trial Tr. 4.18AM 66:3-5, 101:23-102:3 (Evans). Georgia also saw high turnout in the 2020 election cycle. *Id.* at 66:6-8 (Evans). In 2020, more Georgians chose to vote absentee than previous

years, many of them voting absentee for the first time, and that both the sheer volume of people voting absentee in 2020, as well as the large proportion of them who were new or less familiar with that way of voting, created administrative challenges. *Id.* at 66:9-23 (Evans).

RESPONSE: No response.

241. Mr. Germany reiterated this after the 2020 election, when on February 19, 2021, he testified before the House Special Committee on Election Integrity that there was a "massive" increase in absentee ballots in 2020, which created difficulties for election officials trying to run multiple different election processes at once. Trial Tr. 4.16PM 275:4-6, 275:21-24 (Germany). Plaintiffs recognized this issue noting, "As recent elections have illustrated, signing voters up to vote by mail early can relieve pressure on local election offices, making it more likely that everyone gets their ballots on time." Pls. Ex. 36 at 1.

RESPONSE: Plaintiffs ignore the complaints from counties showing that Plaintiffs' actions increased the burden on local election offices. *See, e.g.*, 4/18/24 Trial Tr. 88:12–20 (Evans).

242. In the 2020 primaries, Secretary of State Raffensperger decided to send absentee ballot applications to all active Georgia voters because some counties were already planning to send, or had already sent, applications given the onset of COVID-19, and the Secretary did not want this to create a

"potential unlevel playing field" for voters in different counties. Trial Tr. 4.16PM 255:23-256:4, 269:9-12 (Germany); Pls. Ex. 39; Stipulated Facts ¶ 23. Mr. Germany testified that the Secretary's goal was to allow individuals "of all political backgrounds" to safely "exercise their right to vote during the brunt of the COVID-crisis," because some individuals at that time "might not have been able to or felt able to go vote in person." Trial Tr. 4.16PM 269:2-12, 269:23-270:2 (Germany); Pls. Ex. 39 at 2. The Secretary also took this action to "protect the criticality of the application process to the Georgia absentee ballot process." Pls. Ex. 39 at 2.

RESPONSE: Plaintiffs omit the remainder of Mr. Germany's testimony, where he stated that: "The other reason we did it was we were kind of hoping to minimize the third parties sending out applications … [b]ecause … a big reason we did this was to try to help streamline the data entry phase on county election officials" and "at that point I think there was concerns that they were going to be completely overwhelmed by the data entry component of absentee ballot applications." 4/16/24 Trial Tr. 256:5–17 (Germany).

243. In the 2020 primary, some individuals requested an absentee ballot but did not receive it in time to cast that absentee ballot. Trial Tr. 4.16PM 262:9-14 (Germany). Frances Watson, former Chief Investigator of the Secretary of State's Investigations Division, testified that the Investigations Division specifically received "a lot of complaints about voters

not receiving . . . their absentee ballots after requesting one from Fulton County," particularly for the June 2020 primary. Trial Tr. 4.17AM 74:12-21, 75:5-12 (Watson); Pls. Exs. 347, 348. In response to one complaint, Kevin Rayburn, Georgia's Deputy Elections Director, told an impacted voter to send a second absentee ballot application if they didn't receive their ballot. *See* Pls. Ex. 348 (GA-VA00062464-GA-VA00062466). In the 2020 primary—as is true in any Georgia election—individuals who requested an absentee ballot but never received it had to choose between either cancelling that absentee ballot and voting in person or not voting at all. Trial Tr. 4.16PM 230:10-19 (Germany).

RESPONSE: According to the undisputed trial evidence, the Fulton County delay mentioned here was due to "processing delays in the Fulton County elections office … the volume numbers," and Fulton County being "particularly hard hit … with COVID in the primary with a worker dying of COVID and then other issues." 4/16/24 Trial Tr. 262:18–24 (Germany).

244. The Secretary of State's Office did not send out applications in the general election, but "a number of other groups did," including Plaintiffs and "the Republican Party of Georgia, Donald J. Trump for President and others." Trial Tr. 4.16PM 270:17-21 (Germany); Pls. Ex. 39.

RESPONSE: No response.

245. For the 2020 general election, individuals could request an absentee ballot up to 180 days before the election, which was May 7, 2020. Trial Tr. 4.16PM 240:8-19 (Germany). Absentee ballots, however, could not be sent out until September 15, 2020 for the 2020 general election. Trial Tr. 4.16PM 240:8-19 (Germany); Pls. Ex. 89. Voters who applied to vote absentee toward the beginning of the 180-day window therefore had to wait several months before receiving their requested absentee ballot. Trial Tr. 4.16PM 240:8-19 (Germany). As a result, it is possible that some who applied for an absentee ballot in late spring 2020 but didn't receive a ballot for several months later forgot they had applied for an absentee ballot or were concerned that something had gone wrong with their application and therefore decided to submit another application. *Id.* at 241:10-14 (Germany).

RESPONSE: Plaintiffs omit the remainder of Mr. Germany's testimony: "That was one thing … that was changed in SB 202[.]" 4/16/24 Trial Tr. 240:20–21 (Germany). In other words, SB 202 addressed and remedied the problem identified in Plaintiffs' Proposed Finding.

246. There was an increase in the number of people seeking to cancel their absentee ballot applications in 2020. Trial Tr. 4.18AM 66:25-67:7, 101:18-22 (Evans). But Mr. Evans was unable to testify as to what portion of the 150,000 absentee ballots cancelled in 2020 were cancelled in advance of or separate from the voter showing up to the polls. *Id.* at 102:4-14 (Evans).

He was likewise unable to testify as to what portion of the cancellations involved voters who had received multiple applications from third-party organizations. *Id.* at 102:16-19 (Evans).

RESPONSE: According to the unrebutted trial evidence, the number of people seeking to cancel absentee-ballot applications increased in 2020 but decreased in 2022 after SB 202 was passed. 4/18/24 Trial Tr. 67:3–7 (Evans). Mr. Evans testified that the number of cancelled ballots increased from 6,629 in 2018 to 148,809 in 2020, and then dropped back down to 15,537 in 2022. 4/18/24 Trial Tr. 91:11–21 (Evans).

247. Mr. Evans did testify, however, that there were no systemic issues in 2020 involving people who submitted multiple absentee ballot applications who then received multiple ballots. Trial Tr. 4.18AM 69:2-5 (Evans).

RESPONSE: No response.

248. Mr. Evans also testified that, in the aftermath of the 2020 election cycle, there was a relatively high level of misinformation and disinformation about the results and processes of the election cycle that created more work for his office because it had to spend time and resources communicating to the public assurances about the security and accuracy of the election. *Id.* at 69:6-17 (Evans). He testified that, despite his office's efforts, there remain

individuals with concerns about the security and accuracy of the 2020 election cycle. *Id.* at 69:18-23 (Evans).

RESPONSE: No response.

249. Mr. Evans testified that he believed that the 2020 election cycle in Georgia was successful from an election administration perspective and that the outcome was accurate, confirmed by recount efforts and a statewide audit, the results of which were made public. Trial Tr. 4.18AM 64:25-66:3 (Evans).

RESPONSE: No response.

250. In 2022, the percentage of votes cast via absentee ballot "looked more like other years in Georgia other than 2020" as there were "significantly fewer" absentee ballots cast. Trial Tr. 4.16PM 257:10-259:2, 228:11-17 (Germany).

RESPONSE: No response.

251. Purported voter complaints are primarily "not sworn statements," Trial Tr. 4.17AM 63:17-21 (Watson), especially those reported through the tip alert hotline. Trial Tr. 4.17AM 63:17-21 (Watson). Some are submitted anonymously, others without contact information, and some are based on something that allegedly happened to another individual. Trial Tr. 4.17AM 63:22-64:8 (Watson); Def. Ex. 12. The veracity of these purported voter

complaints has not been verified through admitted evidence. As such, the Court grants these statements little weight.

RESPONSE: These complaints should be granted substantial weight because of their volume and the supporting testimony. They were not offered for truth of the matter asserted. This Court already overruled Plaintiffs' objection on this issue. 4/16/24 Trial Tr. 181:1–19 (counsel and Court); *id.* at 182:16–184:2 ("THE COURT: All right. Well, I guess I understood these questions … that this is all going towards: A, it's not offered for the truth; and, B, it is really effect on the listener."); *id.* at 208:16–209:15 (counsel and Court). Accordingly, these complaints are entitled to great weight.

252. Every purported voter complaint is reviewed, and some receive a follow-up phone call or email, or "if it's just a general vent, then it may not get a follow-up at all." Trial Tr. 4.17AM 15:21-16:5 (Watson). Not every purported voter complaint becomes an open case, Trial Tr. 4.17AM 37:20-24 (Watson), and Ms. Watson testified that "individually it may not take a lot of time" to screen a complaint before deciding whether to open an investigation. Trial Tr. 4.17AM 67:4-9 (Watson).

RESPONSE: Ms. Watson also testified that, although responding to a single voter complaint may not take significant time, "[c]ompounding that by the volume, it creates a lot of time spent on vetting and sorting and assigning cases" within the Investigations Division. 4/17/24 Trial Tr. 67:4–11 (Watson);

see also 4/18/24 Trial Tr. 88:5–11, 88:21–89:5 (Mr. Evans testifying similarly regarding county and State officials).

253. If an investigation into a complaint is opened, it is presented to the State Election Board, and the State Election Board decides on one of the following outcomes: (1) if there is no violation, the case is dismissed; or (2) if there is a violation, the Board could issue a reprimand, offer a letter of instruction to explain how to act in the future, send a cease and desist letter, levy a civil penalty fine, or refer the case to the Attorney General's Office. Trial Tr. 4.17AM 16:9-18 (Watson). Not every investigation is substantiated and not every substantiated investigation is referred to the Attorney General's Office. Trial Tr. 4.17AM 37:8-10, 37:12-15 (Watson).

RESPONSE: No response.

254. Purported voter complaints generally increase in the lead up to elections. Trial Tr. 4.17AM 35:3-8 (Watson). For a state or federal election cycle, the voter fraud alert e-mail gets "thousands of complaints coming in" roughly, with the Investigations Division receiving the most complaints during presidential election years. *Id.* at 67:22-25, 71:7-10 (Watson).

RESPONSE: Ms. Watson agreed that the voter fraud email gets "probably thousands of complaints … during the election cycle" and further acknowledged that was "definitely true in 2020," even "[p]robably more true in 2020." 4/17/24 Trial Tr. 67:22–68:4 (Watson).

255. The Investigations Division received thousands of purported voter complaints in 2020, more so than in prior years. *Id.* at 68:1-4 (Watson). Of those, in 2020 and its aftermath the Investigations Division received "at least" a thousand purported voter complaints about how the election was stolen. *Id.* at 65:8-11 (Watson).

RESPONSE: No response.

256. As more people were aware of absentee voting in 2020, that election saw increased public discourse about the topic and there were differing opinions about absentee voting being expressed among the populous. Trial Tr. 4.16PM 263:22- 264:7 (Germany). In keeping with that trend, there were "drastically more" purported voter complaints received in 2020 concerning absentee voting because there was "tremendously more" absentee voting occurring that year. *Id.* at 179:22- 180:7 (Germany).

RESPONSE: Mr. Germany agreed that "there was a greater emphasis on absentee ballot mail voting" in 2020 and "[p]ossibly" that "more people may have been aware" of it than in previous years. 4/16/24 Trial Tr. 263:22–264:3 (Germany).

257. Overall, the Investigations Division receives "a lot of meritless complaints," many that could be described as a "general expression of unhappiness about mail received." Trial Tr. 4.16PM 234:1-4 (Germany); Trial Tr. 4.17AM 34:13-24, 65:5-7 (Watson). A lot of the purported voter

complaints were also "general vents" or "opinions and threats about government or elected officials." Trial Tr. 4.17AM 65:16-19 (Watson). Such purported voter complaints are generally not investigated, but if they contained "specific threats," they were "forwarded to the proper authority." Trial Tr. 4.17AM 65:20-22 (Watson). In other purported voter complaints, voters demonstrated clear understanding that the mail they received was sent by third parties encouraging them to vote by mail. Trial Tr. 4.17AM 22:17-23:6, 26:14-23, 30:2-14, 75:22-76:17 (Watson); Defs. Exs. 33, 25, 59; Pls. Ex. 348 at 69-71.

RESPONSE: The record does not show that voters demonstrated a clear understanding that the mail they received was sent by third parties encouraging them to vote by mail. Moreover, the cited exhibits cannot be used for the truth of the matter asserted; that is, the complaints are used to show the effect on the State, but they cannot be used to show that voters did or did not understand a message. In fact, Plaintiffs' counsel themselves objected that these exhibits could not be used to show what the complainant thought or believed. 4/17/24 Trial Tr. 27:11–12 (Counsel); *id.* at 28:1–5 (PLAINTIFFS' COUNSEL: "[W]hen we are talking about what the voter thought, felt, experienced, that is just – that's hearsay to which Ms. Watson can't testify[.]").

258. In 2020, Georgia received 195 purported voter complaints regarding absentee ballot applications. *See* Pls. Ex. 347 & 348. Eighty-seven

of them came from voters who requested, but never received an absentee ballot. *Id* By comparison, only 18 referenced distribution of absentee ballot applications by a third party. *Id*. Of the complaints that reference a third party, only two relate to a prefilled absentee ballot application. Def. Exs. 24 & 25. Rather, most expressed displeasure with having received an absentee ballot application at all. *See* Pls. Ex. 348.

RESPONSE: The 195 complaints in Plaintiffs' Exhibit 348 do not include all the complaints in this case. Plaintiffs' cherry-picked numbers cannot be credited because they omit several of the most relevant complaints, which were used as exhibits on their own, including most of the complaints that State Defendants used as exhibits. *See, e.g.*, Defs.' Exs. 5, 14–15. And even if the Court were to look only at Plaintiffs' Exhibit 348, those numbers are still wrong. The cherry-picked 195 complaints show eight complaints mentioning Plaintiffs—not the two Plaintiffs state here. *See* Pls.' Ex. 348 at BATES 71557, 71559, 71561, 71577, 71585, 71595, 71601, and 71615. Plaintiffs also omit complaints referencing other third parties by name (*e.g.*, RNC (70154) and America Votes (71615)).

259. With respect to the purported voter complaints received by the Investigations Division pertaining to receipt of duplicative mailings, Ms. Watson testified that the primary concern in most cases stemmed from the sender mistaking a ballot application for a ballot. Trial Tr. 4.17AM 17:20-22,

68:18-22 (Watson). Ms. Watson testified that voters sometimes make this mistake even if only one application was sent to the voter, and even if the application is not prefilled. Trial Tr. 4.17AM 68:10-17 (Watson).

RESPONSE: Ms. Watson said "primary issue" not "primary concern." 4/17/24 Trial Tr. 17:20–22. She further testified that: "[T]here was also an issue with … many, many out-of-state complainants that were receiving the prefilled absentee ballot applications that either had not lived in Georgia ever or had not lived in Georgia for many, many years." 4/17/24 Trial Tr. 17:23–18:3 (Watson). Ms. Watson did not testify that voters sometimes make this mistake even if only one application is sent; she testified that "[i]t's possible" and agreed that a voter "could confuse an absentee ballot application with a ballot even if it wasn't prefilled[.]" 4/17/24 Trial Tr. 68:10–17 (Watson).

260. Finally, Ms. Watson testified that even if third parties didn't distribute absentee ballot applications, the Investigations Division would still receive complaints about absentee ballot applications. Trial Tr. 4.17AM 67:15-18 (Watson).

RESPONSE: After 2020 and the passage of SB 202, "the volume of complaints about applications that were sent by third parties" has "gone down tremendously … by a large amount." 4/16/24 Trial Tr. 180:8–12 (Germany).

261. The Court finds that the vast majority of complaints to the Elections Division did not pertain to third party absentee ballot application distribution.

RESPONSE: The trial record, including exhibits and testimony, confirms that State Defendants received many complaints about prefilled and duplicate absentee-ballot applications sent by third parties. But none of those complaints was entered into the record for the truth of the matters asserted. And State Defendants do not claim that voters did not also raise other complaints. Moreover, Plaintiffs' Proposed Finding here is incorrect for the reasons State Defendants explained in their responses to paragraphs 254 through 260.

262. Additionally, the Court finds that several of the unsworn purported voter complaints appear to demonstrate that recipients understood Plaintiffs' mailers to be encouraging the recipient to vote absentee. Defs. Ex. 27 ("This is apparently a non-profit organization that is trying to get people to vote by mail"); Defs. Ex. 59 ("The letter was sent to encourage voters to vote by mail").

RESPONSE: The complaints were not admitted for the truth of the matter asserted, so they cannot be used to show that voters did or did not understand any message. In addition, nothing in these complaints shows that

the application was understood to convey a message, as opposed to the cover letter or envelope or both.

263. Likewise, the record reflects an absence of evidence of formal investigations resulting from third party application distribution.

RESPONSE: No response.

264. In press releases dated February 11 and 18, 2021, Secretary of State Raffensperger announced the referral of cases pertaining to election law violations to the Attorney General's Office. Pls. Exs. 140, 142. The investigations of those cases were concluded before SB 202 was enacted. Trial Tr. 4.17AM 41:17-20, 42:23-25 (Watson). None of those cases included absentee ballot application distribution by third parties, and few pertained to absentee ballots at all. Trial Tr. 4.17AM 41:21-42:2, 43:1-4 (Watson); Pls. Exs. 140, 142.

RESPONSE: Ms. Watson agreed that "one investigation, if it's opened, might relate to, say, 100 complaints[.]" 4/17/27 Trial Tr. 88:2–4 (Watson). She further agreed to the obvious proposition that "the investigations division did not investigate any possible violations of SB 202 before the enactment of SB 202[.]" 4/17/24 Trial Tr. 88:5–8 (Watson).

265. There is no evidence that any of the cases described during hearings held before the State Election Board following the 2020 election involved the prefilling or distribution of duplicative absentee ballot

applications by a third-party organization. Trial Tr. 4.17AM 50:7-17, 52:10-55:23, 58:1-62:22 (Watson); Pls. Exs. 122-25, 127, 143, 261.

RESPONSE: No response.

266. Ms. Watson testified that she was not aware of any ineligible individual attempting to vote or improperly voting because of a third-party absentee ballot application mailer. Trial Tr. 4.17AM 84:5-10 (Watson). Neither was she aware of anyone attempting to vote on behalf of a dead person because of a third-party application mailer. *Id.* at 84:11-14 (Watson). Nor did she recall any case that was substantiated and referred to the Attorney General "merely because of a third-party organization prefilling an absentee ballot application." *Id.* at 84:15-19 (Watson). Ms. Watson testified that she did not know of any "substantiated case" that was referred to the Attorney General's Office because of a third party sending multiple absentee ballot applications. *Id.* at 84:22-25 (Watson). Ms. Watson testified that in the "very few" instances in which an individual received two ballots, she did not know or had no way of knowing if "the cause of receiving two ballots was third-party application distribution." *Id.* at 85:11-14, 86:13-17 (Watson). Indeed, such would only happen as a result of "egregious human error" by an election official. Trial Tr. 4.18AM 87:7-20 (Evans).

RESPONSE: Plaintiffs' apparent inference from Ms. Watson's testimony does not follow from her statements. And Mr. Germany testified that

his office in fact "had an instance where someone tried to vote a ballot they received at an out-of-date P.O. Box." 4/16/24 Trial Tr. 186:18–20 (Germany). In other words, the mailing was sent to the P.O. Box's previous owner. And, when the new owner "received [the] ballot, … [he] tried to vote it, the county caught it and the person … went to a criminal investigation." 4/16/214 Trial Tr. 188:1–7 (Germany).

267. In the aftermath of the 2020 general election, various incorrect claims were circulated asserting that the election results were not accurate, leading to an environment where misinformation and disinformation were "running rampant." Trial Tr. 4.16PM 267:3-6, 271:20-24 (Germany); Pls. Exs. 39, 64. On December 14, 2020, Secretary of State Raffensperger sent a letter to Chairman Blackmon of the Georgia House Government Affairs Committee, explaining how in both 2020 and 2018, many individuals in Georgia were disappointed with the results of the general election. Trial Tr. 4.16PM 271:16-19 (Germany); Pls. Ex. 39. Mr. Germany testified similarly during a February 19, 2021 hearing before the House Special Committee on Election Integrity, explaining that such conduct made the post-election process more difficult for election officials. Trial Tr. 4.16PM 275:25-276:10 (Germany).

RESPONSE: No response.

268. On February 19, 2021, Mr. Germany also testified that his office did not see any "widespread systemic fraud" or any reason to think that the

end results of the 2020 election were not accurate. Trial Tr. 4.16PM 274:24-275:3 (Germany); *accord* Trial Tr. 4.16PM 266:19-21 (Germany); Pls. Ex. 64. Mr. Raffensperger similarly communicated this conclusion to legislators in his December 14, 2020 letter to Chairman Blackmon. Pls. Ex. 39.

RESPONSE: No response.

269. Overall, the Secretary of State "spent a considerable amount of time and effort combating misinformation in the aftermath of 2020." Trial Tr. 4.16PM 272:4-7 (Germany); Pls. Ex. 39. This included "holding daily press conferences, sending regular updates to legislators, trying to correct as much disinformation as possible by posting accurate information on social media, and responding directly to voters who [had] questions," all of which entailed additional work for the Secretary of State's Office. Trial Tr. 4.16PM 272:8-11 (Germany); Pls. Ex. 39 at 1.

RESPONSE: No response.

270. Mr. Germany was the "primary drafter" of SB 202, including the Challenged Provisions. Trial Tr. 4.16PM 178:21-179:3, 272:23-273:1 (Germany). He testified that the law was drafted, in large part, based upon voter confusion and concerns about voter fraud alleged in purported voter complaints, as well as to ease election administration. Trial Tr. 4.16PM 180:13-25, 181:22-182:11, 187:7-18, 188:15-189:15, 196:13-197:15, 197:16-198:15, 201:5-16, 205:23-206:21, 217:11-218:17, 221:1-222:10 (Germany).

RESPONSE: Plaintiffs omit Mr. Germany's additional testimony where he addressed voter concerns about being sent information for "someone that they didn't even know" or correct information that made them complain "why do you have this information and why are you sending it out through the mail?" 4/16/24 Trial Tr. 182:12–18 (Germany); *id.* at 184:5–185:3 (Germany). Plaintiffs also omit his testimony about responding to concerns about incorrect addresses. 4/16/24 Trial Tr. 185:4–187:4 (Germany).

271. In drafting, Mr. Germany communicated with legislators and county election officials, Trial Tr. 4.16PM 217:2-8 (Germany), but neither him nor anyone involved in drafting the challenged provisions discussed the proposed changes with Plaintiffs during the drafting process. Trial Tr. 4.16PM 231:2-5 (Germany). Similarly, Ms. Watson, who handled purported voter complaints including those related to absentee ballot applications during the 2020 election, Trial Tr. 4.17AM 36:22-24 (Watson), was not asked for input about SB 202. Trial Tr. 4.17AM 78:10-15 (Watson).

RESPONSE: No response.

272. On February 19, 2021, Mr. Germany testified in front of this committee about HB 531, a precursor to SB 202, the purpose of which was to speak to the issues the Secretary of State's office saw in the 2020 election cycle and "thought needed to be addressed by the assembly." Trial Tr. 4.16PM 274:16-23 (Germany). Mr. Germany did not recall recommending prohibiting

third parties from prefilling absentee ballot applications or sending applications to voters who had already requested an absentee ballot. Trial Tr. 4.16PM 276:16-23 (Germany).

RESPONSE: The committee referenced was the House Special Committee on Election Integrity. 4/16/24 Trial Tr. 274:13 (Germany). The hearing whose specific details Germany could not recall occurred about three years before this trial.

273. During the consideration of SB 202 and related legislation, Representative Barry Fleming, a sponsor of the House Bill 531 that later became SB 202, stated during a hearing of the House Election Integrity Committee that "there are some people who would like to say that no one should [send out unsolicited absentee ballot applications]. But we get into a freedom of speech issue" because "that would be interpreted as campaigning" and "within some reason," individuals could not be told that they "cannot send out something as far as campaigning." Trial Tr. 4.16PM 279:1-13 (Germany); Pls. Ex. 79.

RESPONSE: Representative Fleming's full response states: "I cannot tell you, within some reason, you cannot send out something as far as campaigning. And the idea would be that that would be interpreted as campaigning. Therefore, we will simply say that if you send it out, there will be one standardized form. That form will not be prefilled out, because another

problem that we found is a lot of those forms were prefilled out incorrectly, and it caused a lot of problems when it came into the boards of elections." Pls.' Ex. 79 at 116–17 [2/22/21 at 16:23–17:8].

274. In 2023, two years after SB 202 was enacted, legislation revising the absentee ballot application disclaimer was enacted. Trial Tr. 4.16PM 280:12-14 (Germany). This revision addressed Plaintiffs' concerns with the required disclaimer and they consequently withdrew their challenge to that provision. Trial Tr. 4.15AM 27:14-21.

RESPONSE: The second sentence is part of Plaintiffs' opening statement, not evidence. Moreover, this statement is not relevant as Plaintiffs dismissed their challenge to the Disclaimer Provision. *See* [Doc. 176; Doc. 179 at 2 n.4].

275. Mr. Evans testified to the limitations of the Challenged Provisions. Specifically, he testified that, if a voter applies within the first five days of the absentee ballot application window, the Mailing List Restriction does not prevent that voter from receiving multiple applications just as they did prior to SB 202. Trial Tr. 4.18AM 69:25-70:7 (Evans). He further testified that the Mailing List Restriction does not prevent a voter from receiving multiple applications from different organizations throughout the application period. *Id.* at 70:13-19 (Evans).

RESPONSE: The Anti-Duplication Provision does not prevent all possible duplicate ballot applications, but it largely eliminates counties from needing to process them, and it substantially reduces the confusion from voters who have already requested an application. 4/16/24 Trial Tr. 224:24–225:3 (Germany).

276. Mr. Evans also testified that, if a voter never applies to vote absentee, the Mailing List Restriction does not prevent that voter from receiving multiple applications. *Id.* at 70:20-25 (Evans). Thus, individuals who intend to vote in person could still receive numerous absentee ballot applications in the mail under SB 202. Trial Tr. 4.17AM 72:7-18, 76:23-25 (Watson); Defs.' Ex. 53; Pls. Ex. 348 at 35.

RESPONSE: Because of the Disclaimer Provision, which is no longer challenged in this case, these voters would no longer be confused about how to request removal from any mailing list that is causing them to receive multiple applications. 4/16/24 Trial Tr. 224:10–24 (Germany). Also, the Anti-Duplication Provision addresses the burden on counties by eliminating the need to process *any* duplicate applications. 4/16/24 Trial Tr. 224:24–225:3 (Germany). And voters who had already submitted an application would not be confused about why they are receiving another one.

277. Additionally, if a voter moved from Georgia to a different state but failed to update their Georgia voter registration, the Mailing List

Restriction does not prevent that voter from receiving multiple absentee ballot applications from one or many third-party organizations. *Id.* at 71:5-13 (Evans).

RESPONSE: No response.

278. The Mailing List Restriction does not prevent a voter from submitting duplicate absentee ballot applications or from submitting an application and later canceling it. *Id*. at 71:14-20 (Evans).

RESPONSE: The Anti-Duplication Provision substantially reduces these occurrences. *See, e.g.*, 4/18/24 Trial Tr. 90:7–91:21 (Evans).

279. Finally, Mr. Evans testified that neither of the challenged provisions address voters confusing absentee ballot applications with absentee ballots. *Id*. at 71:22-72:1 (Evans).

RESPONSE: This issue was addressed by a separate provision, the Disclaimer Provision.

280. Plaintiffs are strongly motivated comply with the law. Trial Tr. 4.15PM 143:19-22, 150:4-6, 151:3-10, 167:1-2 (Lopach). For compliance with the Mailing List Restriction this means not sending an application to a voter who has already submitted one. O.C.G.A. § 21-2-381(a)(3)(A)-(B); Pls. Ex. 7 at 41; Trial Tr. 4.16PM 175:23-176:8 (Germany); Trial Tr. 4.15PM 210:4-13 (Lopach). This is also supported by both Plaintiffs' and Defendant's expert reports. Pls. Ex. 28 § 4; Pls. Ex. 30, pt. 4; Pls. Ex. 33 § XI.

RESPONSE: Plaintiffs omit discussing the five-day safe harbor. Under that provision, as Mr. Germany testified without contradiction, "as long as you're checking publicly available data that's been made available five days or newer than that, then you can't be responsible." 4/16/24 Trial Tr. 176:7–15 (Germany).

281. To avoid potential liability when sending a second wave of absentee ballot application mailers, Plaintiffs would need to identify voters who have already requested an absentee ballot from the state voter file, identify voters who have already requested a ballot, and remove those voters from their mailing list. *See* Pls. Ex. 28 § 4; Pls. Ex. 30, pt. 4; Pls. Ex. 33 § XI; Pls. Ex. 7 at 41; Trial Tr. 4.15PM 210:4-13 (Lopach).

RESPONSE: The record shows that at least one company, Arena, can do exactly this with no issue. 4/17/24 Trial Tr. 173:2–14 (Waters).

282. The only way to check which voters have been added to the state's absentee voter file is to download each daily absentee voter file and compare it to previous versions of the absentee voter file to determine whether and when a name was added. Trial Tr. 4.17 PM 162:5-11 (Grimmer); Trial Tr. 4.18AM 26:11-15 (Evans). Because Georgia has between 7 and 8 million registered voters, an organization would need specialized software to open the statewide voter file because the number of registered voters exceeds the row limit in Excel. Trial Tr. 4.17PM 157:17-158:3 (Grimmer).

And the organization would need to do this repeatedly since, as noted *supra* §§ IV.A, IV.E, the voter file is a living document that is updated with new registrants and changing addresses of people that have moved. Trial Tr. 4.15PM 150:10-15 (Lopach).

RESPONSE: Other software to review these data is "widely available." 4/17/24 Trial Tr. 137:9–18 (Grimmer). Moreover, Plaintiffs do not explain why they would need to check which voters have been added on a *daily* basis, as Plaintiffs are not suggesting that they would send mailers each day. Indeed, the relevant date for the safe harbor is when the application information is made available to the public. O.C.G.A. § 21-2-381(a)(3)(A); 4/18/24 Trial Tr. 97:19–25 (Evans). Nor do they explain why they would need to open the entire file of 7–8 million registered voters, as opposed to the absentee voter file.

283. And there will always be voters who apply for a vote-by-mail ballot after Plaintiffs have sent their data to the printer and put their vote-by-mail pieces into the postal stream. *Id.* at 150:22-151:2, 153:2-8 (Lopach). Mr. Lopach stated that "by the time [their mailers are] in people's mailboxes with a hypothetical second mailing, there still would be some gap in people who had applied to vote by mail after [the date Plaintiffs last checked the state's website] that [Plaintiffs] weren't able to successfully remove from the data by the time [they] went to the printer and then entered the mail stream." Trial Tr. 4.15PM 212:22-213:2 (Lopach).

RESPONSE: Contrary to Mr. Lopach's speculation, the trial record unambiguously confirms that at least one printer, Arena, is able to satisfy Plaintiffs' printing needs in compliance with SB 202. 4/17/24 Trial Tr. 173:2–14 (Waters) ("I can't imagine why someone wouldn't be able to do that[.]"). And this situation is directly addressed by the safe harbor provision: "A person or entity shall not be liable for any violation of this subparagraph if such person or entity relied upon information made available by the Secretary of State within five business days prior to the date such applications are mailed." O.C.G.A. § 21-2-381(a)(3)(A). The safe harbor provision "protects an organization if that organization relies on absentee request data the state made available within five business days before the organization mailed its absentee ballot applications[.]" 4/18/24 Trial Tr. 97:19–25 (Evans).

284. Additionally, without access to Georgia's rollover list, if Plaintiffs send an absentee ballot application to a voter on the rollover list, and that voter sends in Plaintiffs' absentee ballot application, Plaintiffs are at risk of fines due to the anti-duplication provision of SB 2020. *Id.* at 145:16-20 (Lopach).

RESPONSE: Georgia does not maintain a "rollover list," but it makes publicly available data on all voters who are in "rollover" status. 4/18/24 Trial Tr. 95:11–15 (Evans).

285. For these reasons, when SB 202 was first enacted, Plaintiffs believed they would not be able to run an absentee voting program in Georgia or send any absentee ballot application mailers due to the risk of fines. Trial Tr. 4.15AM 103:1-8 (Lopach); Trial Tr. 4.15PM 141:8-11 (Lopach).

RESPONSE: No response.

286. Plaintiffs contacted Maren Hesla at Mission Control to discuss compliance with SB 202. Trial Tr. 4.15PM 141:11-12 (Lopach). Mr. Lopach asked Ms. Hesla to write a summary describing how Plaintiffs could comply with SB 202 to discern the impact of the law on their programming. Trial Tr. 4.15PM 141:8-12, 143:15-22 (Lopach); Trial Tr. 4.16AM 42:19-23 (Hesla); Pls. Ex. 40.

RESPONSE: Mr. Lopach asked Ms. Hesla "about what would be required to physically pull out ballots if [they] had printed after the five-day deadline," but she "didn't consider other ways to comply with the law[.]" 4/16/24 Trial Tr. 64:7–17 (Hesla).

287. At that time, Ms. Hesla concluded that it would not be possible to go through the millions of pieces of mail printed and extract individual pieces. Trial Tr. 4.16AM 47:15-23 (Hesla); *see also* Trial Tr. 4.15PM 152:7-16 (Lopach); Pls. Ex. 30.

RESPONSE: No response, other than to note that at least one other company, Arena, is able to satisfy Plaintiffs' printing needs in compliance with

SB 202. 4/17/24 Trial Tr. 173:2–14 (Waters) ("I can't imagine why someone wouldn't be able to do that[.]").

288. Ms. Hesla testified that, to remove Georgia voters who had already requested an absentee ballot from the Plaintiffs' mailing list before printing began, Plaintiffs would be forced to change the printing company that they used, to change the content and format of their mailers, and to eliminate the personalization aspect of their mailers (i.e., eliminating the use of multiple creatives and only using one creative for all Georgian voters), thereby eliminating the experimentation with different formats that Plaintiffs prioritize. Trial Tr. 4.16AM 48:2-13 (Hesla). Plaintiffs would also be forced to drastically limit the number of pieces printed at one time. *Id.* Ms. Hesla further testified that compliance with SB 202 is further complicated by the lack of clarity around when SB 202's five-day grace period begins. *Id.* at 48:18-49:1 (Hesla).

RESPONSE: The record shows that at least one company, Arena, can meet this deadline. 4/17/24 Trial Tr. 173:2–14 (Waters) ("I can't imagine why someone wouldn't be able to do that[.]"). But Plaintiffs' desire to use a union printer apparently outweighs their desire to get the printings done. Mr. Lopach testified that "[i]t is a business decision to use union printers" and agreed that his decision stands "[e]ven if that means that there are certain programs [Plaintiffs] can't do because the union printers can't meet the deadlines[.]"

4/15/24 Trial Tr. 261:13–18 (Lopach). The effects of Plaintiffs' decision to use only union printers cannot fairly be attributed to SB 202.

289. Ms. Hesla credibly testified, and this Court agrees, that it would be impossible to comply with SB 202's five-day safe harbor under Plaintiffs' current operations. *Id.* at 67:9-12 (Hesla).

RESPONSE: Same response as to paragraph 288.

290. Plaintiffs subsequently determined they could send one absentee ballot application mailer that arrives as close as possible to the first day of absentee ballot application availability in Georgia. Trial Tr. 4.15AM 103:8-12 (Lopach); Trial Tr. 4.15PM 127:25-126:3, 144:19-22 (Lopach).

RESPONSE: No response.

291. But by limiting their absentee voting program in Georgia to a single wave of mailings sent at the beginning of absentee voting application period, Plaintiffs are foreclosed from speaking to certain newly registered voters and recently moved voters. Trial Tr. 4.15AM 82:22-83:15 (Lopach). Plaintiffs may only speak to new voters who register between when Plaintiffs create their mailing lists for their two waves of absentee ballot application mailings—as well as other voters who move and update their registration information during that time—if they are able to send a second wave of mailers later in the election cycle. *See* Trial Tr. 4.15PM 152:25-153:8; *see also supra* § IV.E. Plaintiffs testified that sending a wave of mailings

just to new registrants or recently moved voters would be costly, and that they would still risk fines because the voter file is always changing so Plaintiffs would not know whether the new or newly moved voter has also already signed up to vote by mail. Trial Tr. 4.15PM 153:15-24.

RESPONSE: Nothing in SB 202 prevents Plaintiffs from sending as many letters as they desire, like the second wave they sent after SB 202's passage, as referenced in paragraph 294. *See* 4/15/24 Trial Tr. 146:12–17 (Lopach).

292. Similarly, when Stacey Abrams' campaign sent out absentee ballot applications during the 2022 primary, Mr. Germany did not recall but did not dispute his deposition testimony that, similar to Plaintiffs, the campaign sent those applications "close to when the application window opened," stating "it seems like something they would do." Trial Tr. 4.16PM 261:20-262:1-7 (Germany).

RESPONSE: No response.

293. Mr. Lopach stated that they could not risk fines because foundations, donors, and other contributors that support them, provide financial resources "with the intent that they are used to help engage underrepresented populations in our electorate . . . not . . . to pay fines." Trial Tr. 4.15PM 149:24-150:3 (Lopach). Plaintiffs would not view themselves as good partners if they put themselves in a position to be fined by the state. *Id.*

at 150:4-6 (Lopach). Additionally, Plaintiffs would rather spend their money engaging underrepresented people in our democracy. *Id.* at 152:21-23 (Lopach).

RESPONSE: No response.

294. Thus, instead of sending a second wave of absentee ballot applications and risking associated fines, Plaintiffs in 2022 sent a follow-up letter that referenced their previously sent absentee ballot application mailer, with the hope that "in the event the recipient had the original package," the follow-up letter would serve to "direct them toward that original package." Pls. Ex. 318; Trial Tr. 4.15PM 146:14- 17, 147:5-6, 147:14-18, 149:14-18 (Lopach).

RESPONSE: No response.

295. The follow-up letter also directs the recipient how to request an application online from Georgia's Secretary of State website in case the recipient did not keep Plaintiffs' original mailer. Pls. Ex. 318; Trial Tr. 4.15PM 147:19-148:5 (Lopach). Mr. Lopach stated that this process can produce complications for a voter who does not have a computer or WiFi access, a printer at home, or is not sufficiently literate to navigate to the Secretary of State's website. *Id.* at 148:9-16 (Lopach).

RESPONSE: Mr. Lopach's testimony is based on conjecture. The trial record does not show whether or to what extent these letters had any impact because Plaintiffs did no tracking. 4/15/24 Trial Tr. 157:21–158:3 (Lopach).

And voters unable or unwilling to use a computer or printer have other ways to obtain a hard-copy application. *See* 4/18/24 Trial Tr. 81:16–24 (Evans).

296. The follow-up letter sends a different message than a mailer with an application. *Id.* at 148:23 (Lopach). Before SB 202, Plaintiffs wrote in their cover letter that an absentee ballot application was enclosed. Pls. Ex. 26 ("I have sent you the enclosed absentee ballot application . . . ."). Since Plaintiffs cannot include an application in their second mailing, they have changed the wording of their letter. Pls. Ex. 318 ("We recently sent you an absentee ballot request form to make it easy to request an absentee ballot for the November election"); Trial Tr. 4.15AM 93:23-94:6 (Lopach).

RESPONSE: The follow-up letter stated: "We recently sent you an absentee ballot request form." This sends the same core message as a letter saying that an absentee-ballot application is enclosed. The application itself does not communicate any message; any message is found in the cover letter or the envelope. 4/15/24 Trial Tr. 67:16–20 (Lopach) ("We are speaking to you with an envelope addressed to you. We're speaking to you with a letter addressed to you talking about why, in the pandemic election, voting by mail was a safe way to engage with democracy, why voting by mail is convenient.").

297. Mr. Lopach stated that not being able to send a second absentee ballot application mailer to their desired recipients adds additional hurdles to

communities that already have hurdles participating in elections. Trial Tr. 4.15PM 148:17-19 (Lopach).

RESPONSE: Mr. Lopach failed to substantiate his belief that additional hurdles would be imposed. All such recipients may have already submitted the first applications Plaintiffs mailed. Or they may obtain applications from numerous other places. Or they may vote in person.

298. For the 2024 Election, Plaintiffs will again send only one wave of absentee ballot application mailers in Georgia, but two waves in every other state where they run their absentee ballot application programming. *Id.* at 160:20-22 (Lopach). Plaintiffs will likely again send a follow-up letter despite the lack of evidence that it is effective. Trial Tr. 4.15PM 161:2-4 (Lopach).

RESPONSE: No response.

299. If SB 202 were not in place, Plaintiffs would send a second wave of absentee ballot application mailers to eligible Georgia voters. *Id.* at 161:11-12 (Lopach).

RESPONSE: Mr. Lopach testified that Plaintiffs "would *likely look at* sending a second wave of vote by mail," but that it would "depend[] on the opening day and closing day, … how much time there is in between, and can we fit in a second mailing while still removing the lion's share of respondents from the first mailing and people who are on the rollover list[.]" 4/15/24 Trial

Tr. 161:9–18 (Lopach) (emphasis added). His statement does not support Plaintiffs' proposed finding.

300. Due to SB 202, Plaintiffs no longer prefill the absentee ballot application with the intended recipient's name and address. Trial Tr. 4.15PM 127:22-24, 140:2-4, 160:22-24 (Lopach).

RESPONSE: Before SB 202, in 2020, Plaintiffs sent out two waves that did not have prefilled absentee-ballot applications. 4/15/24 Trial Tr. 207:11–207:19 (Lopach) (declining to agree that Plaintiffs' message in those two waves was "the exact same message," but agreeing that it was "a very similar message"). So Plaintiffs did not always rely upon prefilling, even before SB 202.

301. If Plaintiffs were allowed to prefill, they would prefill "the date of the election . . . the first, middle, last, suffix of the individual's name and the residential address. And . . . on page 2, Box Number 9, [they] would again print [the] first, middle, last and suffix [of the individual recipient]." Trial Tr. 4.15PM 130:20-131:1, 132:21-23 (Lopach). Plaintiffs would continue to use the state voter file to prefill this information. *Id.* at 131:7-9, 139:24-140:4 (Lopach).

RESPONSE: Plaintiffs obtain data from third-party vendors who manipulate State data. *See* 4/15/24 Trial Tr. 219:13–24 (Lopach).

302. Mr. Lopach testified that a cover letter without a prefilled application changes their message by leaving the recipient to navigate the application on their own. Trial Tr. 4.15PM 140:7-13 (Lopach). Additionally,

the form is no longer as effective in "specifically speak[ing] to [the recipient] and invit[ing] them to engage with the document." *Id.* at 140:13-15 (Lopach).

RESPONSE: Mr. Lopach's testimony that a cover letter without a prefilled application would change Plaintiffs' message should be considered alongside his testimony that Plaintiffs would never send only an application because it would be confusing. 4/15/24 Trial Tr. 233:9–17 (Lopach). His testimony shows that sending applications was about lowering transaction costs, not intending to send a message. In the words of Mr. Lopach, Plaintiffs' speech is: "We want you to vote. And here is but one tool that may make it easier[.]" 4/15/24 Trial Tr. 67:3–9 (Lopach). The messages (if any) are found in Plaintiffs' cover letter and envelope, with the application serving as a tool, but not as an inherently expressive or symbolic act. And merely intending to send a message is not sufficient to constitute speech. *Holloman*, 370 F.3d at 1270. A message must be perceived as speech as well. *Id.* The prefilled application is about facilitating conduct, not sending a message. And even if it were speech, Plaintiffs have no way to know whether the cover letter without an application is any more or less effective than a cover letter with an application. 4/15/24 Trial Tr. 157:25–158:3 (Lopach) ("There is nothing from the second letter that puts us in the position to understand its impact, if any, on the first package.").

303. Also, Plaintiffs can no longer reference that the enclosed application is prefilled with the recipient's name and address in their cover

letter, diminishing its "selected" messaging. *See* Pls. Exs. 27, 36; Trial Tr. 4.15PM 132:12-13, 133:8-12 (Lopach).

RESPONSE: The messages, as Mr. Lopach confirmed, are not tied to the application itself. 4/15/24 Trial Tr. 67:3–9, 233:22–234:4 (Lopach).

304. Additionally, Plaintiffs described that the two-page absentee ballot application without the voter's prefilled name may be a "puzzle" for voters who have difficulty with vision, who are neurodivergent, or who have less proficiency with reading or the English language. Trial Tr. 4.15PM 131:16-23 (Lopach). "If at the very least the recipient sees their name and address, they can identify with [their name] and it draws them in to engage with the document in ways [a lack of prefilling] is not inviting [them] to participate with." *Id.* at 131:24-132:2 (Lopach).

RESPONSE: Plaintiffs do not prefill the entire application, so a voter would still need to fill in parts of the form, such as a driver's license number, signature, date, and birthdate. *See, e.g.*, 4/15/24 Trial Tr. 80:2–3 (Lopach); 4/16/24 Trial Tr. 145:5–11 (Green) ("I would say that is … an example of a partial[ly] fill[ed]" form.).

305. Plaintiffs concluded that by not being able to prefill the absentee ballot application, "the reader [will be] less engaged with the document," Trial Tr. 4.15AM 100:19-101:11 (Lopach).

RESPONSE: No data in the record supports this conclusion; it is nothing more than Plaintiffs' conjecture.

RESPONSES TO PLAINTIFFS' CONCLUSIONS OF LAW

1. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343, 1357, and 42 U.S.C. § 1983. It also has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, to grant the declaratory relief requested.

RESPONSE: State Defendants agree that this Court has federal question jurisdiction under 28 U.S.C. § 1331 and that no further determinations of jurisdiction are required.

2. Venue is proper in this District under 28 U.S.C. § 1391(b) because the Defendants in their official capacities reside in this District and all Defendants reside in Georgia, and because a substantial portion of the events giving rise to these claims occurred in the Northern District of Georgia.

RESPONSE: No response.

3. Plaintiffs have standing to bring this action.

RESPONSE: No response.

4. Standing requires injury-in-fact, which is "an invasion of a legally protected interest" that "is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Common Cause/Georgia v. Billups*,

554 F.3d 1340, 1350 (11th Cir. 2009) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). In First Amendment cases, this standard is "most loosely applied" to provide broad speech protections. *Pittman v. Cole*, 267 F.3d 1269, 1283 (11th Cir. 2001).

RESPONSE: No response.

5. Plaintiffs have standing because the "credible threat" of civil and criminal penalties under SB 202 chills Plaintiffs' speech. *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 1304 (11th Cir. 2017) (en banc).

RESPONSE: No response.

6. Plaintiffs' operations are directly and negatively impacted by the Ballot Application Restrictions. Specifically, the Mailing List Restriction limits the number, timing, and audience of Plaintiffs' absentee ballot application mailers. FOF ¶¶ 9, 290-91, 298-99. Likewise, Plaintiffs' absentee ballot applications can no longer be personalized as a result of the Prefilling Prohibition. FOF ¶¶ 8, 117, 300, 303. Because the Ballot Application Restrictions force Plaintiffs to limit their First Amendment activities due to their "actual and well-founded fear that the law will be enforced against them," *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988), this Court concludes that Plaintiffs have standing to challenge the Ballot Application Restrictions under the First Amendment.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 8–9, 117, 290–91, 298–300, 303. In those paragraphs, Plaintiffs have not shown any basis to conclude that their operations are negatively impacted by the provisions they challenge. Further, *Virginia v. American Booksellers Association, Inc.*, 484 U.S. 383, 392 (1988), involved the interpretation of obscenity laws that were "aimed directly at plaintiffs[.]" Merely having to comply with Georgia law related to elections does not make statutes targeted at Plaintiffs nor does it show a credible threat the law will be enforced against them. *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 04 (11th Cir. 2017) (en banc).

7. The First Amendment was "fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes," *Meyer v. Grant*, 486 U.S. 414, 421 (1988), and courts must "be vigilant . . . to guard against undue hindrances to political conversations and the exchange of ideas." *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 191-92 (1999). Accordingly, protected political speech is broadly defined, such as "the expression of a desire for political change," "communication of information," and "dissemination and propagation of views and ideas" about the electoral process. *Meyer*, 486 U.S. at 421-22 & 422 n.5 (citing *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980)).

RESPONSE: No response.

8. It is undisputed that Plaintiffs "disclose, publish, [and] disseminate information" regarding absentee voting in Georgia by sending personalized mailers that include absentee ballot applications prefilled with the recipient's name and registered address as both appear in the Georgia voter file. FOF ¶¶ 117, 129-33. In doing so, "they engage in speech within the meaning of the First Amendment." *NetChoice, LLC v. Att'y Gen., Fla.*, 34 F.4th 1196, 1210 (11th Cir. 2022) (quotation marks omitted); *VoteAmerica v. Schwab*, 671 F. Supp. 3d 1230, 1244 (D. Kan. 2023) ("*Schwab*").

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 117, 129–33. While Plaintiffs express messages in their mailings, the mailing of the application itself is not expressive and therefore is not protected by the First Amendment. Plaintiffs explained that the application was only a tool and that Plaintiffs have never sent nor will send an absentee-ballot application without a cover letter. 4/15/24 Trial Tr. 66:2–3, 68:4–8, 233:9–12 (Lopach). Further, *VoteAmerica v. Schwab*, 671 F. Supp. 3d 1230 (D. Kan. 2023), is on appeal, *appeal docketed*, No. 23-3100 (10th Cir. June 1, 2023), and other courts have disagreed. *See* [Doc. 244, ¶¶ 119–23].

9. Like pamphlet distributors, Plaintiffs disseminate printed information about the important political issue of whether and how to request and vote an absentee ballot. *See generally McIntyre v. Ohio Elections*

Comm'n, 514 U.S. 334 (1995) (finding the First Amendment protects the activity of disseminating pamphlets anonymously). They also speak specifically to their recipients through their personalized mailers. FOF ¶¶ 198, 203, 216, 302-03. Providing this exclusive voter experience has allowed Plaintiffs to successfully convey their pro-mail voting message. FOF ¶¶ 199, 217-18, 222, 230, 233. And each piece of Plaintiffs' mailers both conveys information about absentee voting in Georgia and expresses Plaintiffs' pro-mail voting message that the specific recipient should participate in the upcoming election by requesting an absentee ballot. FOF ¶¶ 119, 121, 124, 126, 132, 138, 199, 201-03, 206, 215-16.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 119, 121, 124, 126, 132, 138, 198–99, 201–03, 206, 215–16, 217–18, 222, 230, 233, 302–03, as well as ¶¶ 151–53. Plaintiffs presented no evidence at trial that a reasonable observer would understand their purported "pro-mail voting message." Further, the evidence did not show that "each piece" of the mailers convey any message, because the application did not do so. Mr. Lopach testified that the message was in the cover letter and carrier envelope. 4/15/24 Trial Tr. 234:1–8 (Lopach). Plaintiffs explained that the application was only a tool and that Plaintiffs have never sent an absentee-ballot application without a cover letter. 4/15/24 Trial Tr. 66:2–3, 68:4–8, 233:9–12 (Lopach).

10. The carrier envelope specifies the intended voter Plaintiffs are speaking to and encourages the addressee to "sign up to vote from home today!" FOF ¶¶ 119, 122, 124, 201. Plaintiffs can say this to each recipient when they are able to enclose within their mailer all the tools necessary to apply for an absentee ballot, no matter the recipient's individual circumstances. FOF ¶¶ 20, 64, 205-07.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 20, 64, 119, 122, 124, 201, 205–07. Plaintiffs make these statements on the non-absentee-ballot-application portions of their mailers, which are unaffected by the challenged provisions of SB 202.

11. The cover letter similarly contains both information about absentee voting and personalized encouragement to engage in the democratic process. FOF ¶¶ 124-25, 127-28, 136. While each is targeted toward the specific recipient with a different formulation of Plaintiffs' pro-mail voting message, FOF ¶¶ 124-25, 199, they all reference the enclosed application and note its personalization when applicable. FOF ¶¶ 126, 202, 296.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 124–28, 136, 199, 202, 296. Plaintiffs admit that the cover letter is needed to explain the application and that sending the application alone "would create greater confusion and concern among the people who received it[.]" 4/15/24 Trial Tr. 233:9–17 (Lopach).

12. Inclusion of a personalized absentee ballot application enables Plaintiffs to disseminate the specific instrument the recipient can use to act upon Plaintiffs' encouragement, regardless of whether they have access to a printer or internet access. FOF ¶¶ 20, 64, 129, 131-33, 136, 205-07, 215. Its personalization further conveys Plaintiffs' message that the form should be completed and returned by the specified recipient. FOF ¶¶ 132, 136, 199, 202-03, 216, 304.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 20, 64, 129, 131–33, 136, 199, 202–03, 205–07, 215–16, 304. Plaintiffs did not identify any evidence showing that prefilling the absentee-ballot application itself communicates any message. Rather, Plaintiffs explained that other parts of the mailers communicate that: "We are speaking to you with an envelope addressed to you. We're speaking to you with a letter addressed to you talking about why, in the pandemic election, voting by mail was a safe way to engage with democracy, why voting by mail is convenient." 4/15/24 Trial Tr. 67:16–20 (Lopach). Each such message is found in the cover letter or on an envelope, not the application itself.

13. Finally, Plaintiffs' inclusion of a pre-addressed, postage-paid return envelope reinforces Plaintiffs' message that the recipient should complete and return the enclosed absentee ballot application in order to vote by mail, FOF ¶¶ 137-38, 199, 206, and that the recipient should participate

by mail no matter their access to an envelope and stamp, internet, or transportation. FOF ¶¶ 20, 206, 209. It also reiterates that the *specific recipient* should take this action, as it is pre-addressed to the election office for the precinct where the recipient is registered to vote. FOF ¶¶ 137, 199, 206.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 20, 137–38, 137, 199, 206, 209, which confirm that Plaintiffs' messages are found in other parts of their mailers, not the absentee-ballot application.

14. Plaintiffs' mailers are pure speech because they include documents containing printed words. *Cf. Burns v. Town of Palm Beach*, 999 F.3d 1317, 1342-43 (11th Cir. 2021) (regulating expressive conduct and describing forms of pure speech to include the printed word); *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1242 (11th Cir. 2018) ("*FNB*"). The entirety of Plaintiffs' mailers uses written words—including the prefilled voter information on the enclosed application—to convey that voting is easy and that the recipient should engage in the voting process by completing and submitting the enclosed, prefilled application. FOF ¶¶ 132, 136, 199, 202-03, 215-16, 304. Additionally, when regulated activity "depends on—and cannot be separated from—the ideas communicated" it is "functionally a regulation of speech." *Honeyfund.com v. Governor*, 94 F.4th 1272, 1278 (11th Cir. 2024).

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 132, 136, 199, 202–03, 215–16, 304. Additionally, the Eleventh Circuit's decision in *Honeyfund.com Inc. v. Governor*, 94 F.4th 1272, 1278 (11th Cir. 2024), supports State Defendants because no inquiry into the content of the message is required in this case—the only question is whether Plaintiffs send duplicate applications and if those applications are prefilled, regardless of the message. Further, *Honeyfund.com* dealt with a conduct defense to allegedly content-based restrictions on speech, which is again not relevant here. *Id*. Finally, the citation from *Burns v. Town of Palm Beach*, 999 F.3d 1317, 1343 (11th Cir. 2021), only references signs, posters, books, and films as "pure speech."

15. Defendants acknowledge that part of Plaintiffs' mailers are speech, FOF ¶¶ 201-02, and a main SB 202 sponsor recognized the First Amendment implications of distributing absentee ballot applications to encourage voters to vote by mail. FOF ¶ 273. And the Supreme Court has instructed federal courts to "refuse[] to separate the component parts of" speech "from the fully protected whole" because "[s]uch an endeavor [is] both artificial and impractical." *Riley v. Nat'l Fed'n of the Blind of N.C.*, 487 U.S. 781, 796 (1988). To separate out Plaintiffs' cover letters from the entirety of their absentee ballot application mailers would be to engage in the improper "slicing and dicing" of speech that numerous other courts have rejected. *See, e.g.*, *League of Women Voters v.*

Hargett, 400 F. Supp. 3d 706, 720 (M.D. Tenn. 2019) (quotation marks omitted); *Schwab*, 671 F. Supp. 3d at 1244; *see generally Priorities U.S.A. v. Nessel*, 462 F. Supp. 3d 792, 811-812 (E.D. Mich. 2020).

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 201–02, 273. The Supreme Court's decision in *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 796 (1988), dealt with distinguishing between commercial speech and other types of speech, such that the Court could not apply different standards of scrutiny to different phrases. That is far different than here, when Plaintiffs could not identify any evidence showing that the absentee-ballot application *itself* communicates any message that would have to be separated. Rather, Plaintiffs explained that other parts of the mailers communicate that: "We are speaking to you with an envelope addressed to you. We're speaking to you with a letter addressed to you talking about why, in the pandemic election, voting by mail was a safe way to engage with democracy, why voting by mail is convenient." 4/15/24 Trial Tr. 67:16–20 (Lopach). Each such message is found in the cover letter or on an envelope, not on the absentee-ballot application itself. *Id.* at 234:2–4 (Lopach). As Mr. Lopach further testified, the application is merely a tool: "All of those work together to create a message to the recipient saying, we believe you are important. We believe your voice is important in our elections. We want you to participate. Here are the tools you need to participate

if you choose to vote by mail." *Id.* at 68:4–8 (Lopach); *see also id.* at 66:2–3 (Lopach) ("[I]t is one more tool for us to help increase their participation"). That is why Plaintiffs have never sent an absentee-ballot application to a voter without a cover letter. *Id.* at 233:9–12 (Lopach). And that is completely unlike voter-registration drives that are pure speech when they encourage citizens to register. *League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 720 (M.D. Tenn. 2019). Finally, reliance on *Schwab*, 671 F. Supp. 3d 1230, is misplaced because that case is on appeal, *appeal docketed*, No. 23-3100 (10th Cir. June 1, 2023), and other courts have disagreed. *See* [Doc. 244, ¶¶ 119–23].

16. The components of Plaintiffs' mailers reference each other to reinforce Plaintiffs' pro-mail voting message. FOF ¶¶ 120, 126, 137-38, 201, 136, 202, 206. Together, the pieces of Plaintiffs' mailers make a complete package, the whole of which collectively communicates Plaintiffs' message. FOF ¶¶ 117-18, 138, 199. Thus, the distribution of personalized absentee applications is "characteristically intertwined" with the expression of their message. *Village of Schaumburg*, 444 U.S. at 632; FOF ¶ 138. And, as "their application packets include speech that communicates a pro-mail voting message," the entirety of Plaintiffs' mailers are speech, and their distribution requires First Amendment protection. *VoteAmerica v. Schwab*, 576 F. Supp. 3d 862, 875 (D. Kan. 2021); *see also Schwab*, 671 F. Supp. 3d at 1243; *Priorities USA*, 462 F. Supp. 3d at 814.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 117–18, 120, 126, 136–38, 199, 201, 202, 206. As discussed in response to Plaintiffs' Proposed COL ¶ 15, there is no evidence in the trial record showing that the application itself includes speech, and it is not intertwined in the same way as a solicitation for financial support is connected to informative and persuasive speech. *Compare Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980) (canvassers soliciting funds and advocacy). Finally, reliance on *Schwab*, 671 F. Supp. 3d 1230, is misplaced because that case is on appeal, *appeal docketed*, No. 23-3100 (10th Cir. June 1, 2023), and other courts have disagreed. *See* [Doc. 244, ¶¶ 119–23].

17. The Court finds that Plaintiffs' mailing of personalized absentee ballot applications to registered Georgia voters is itself speech, and is also an intertwined part of Plaintiffs' communicative mailers. As such, Plaintiffs' conduct protected by the First Amendment.

RESPONSE: Plaintiffs have provided no evidence to support the conclusion that the application portion of Plaintiffs' mailers is part of Plaintiffs' speech, especially because, according to the unrebutted evidence, Plaintiffs' intended message is in the cover letter or carrier envelope. 4/15/24 Trial Tr. 233:22–234:4 (Lopach).

18. "Constitutional protection for freedom of speech does not end at the spoken or written word. The First Amendment guarantees all people the

right to engage not only in pure speech, but expressive conduct as well." *FNB*, 901 F.3d 1235, 1240 (11th Cir. 2018) (citing *Texas v. Johnson*, 491 U.S. 397, 404 (1989); *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004)) (quotation marks omitted).

RESPONSE: No response.

19. Conduct is sufficiently expressive if (1) there was an intent to convey a particularized message, and (2) "the surrounding circumstances would lead the reasonable observer to view the conduct as conveying some sort of message." *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004); *FNB*, 901 F.3d at 1242; *Burns*, 999 F.3d at 1336; *Texas v. Johnson*, 491 U.S. 397, 404 (1989).

RESPONSE: No response.

20. This Court concludes that the distribution and personalization of applications convey a message about the importance of voting. *Schwab*, 671 F. Supp. 3d at 1249; *see also Voting for Am., Inc. v. Steen*, 732 F.3d 382, 398 (5th Cir. 2013) (noting that "facilitate[ing] voter registration . . . encompasses activities that involve expression"); *League of Women Voters*, 400 F. Supp. 3d at 720 (recognizing that voter registration activities are expressive). Indeed, "only an organization which intends to convey such a message would expend its resources to personalize and distribute advance mail ballot applications." *Schwab*, 671 F. Supp. 3d at 1243.

RESPONSE: The trial record does not support this proposed conclusion, and the Court thus cannot conclude that the distribution and personalization of applications conveys a message about the importance of voting. Plaintiffs can personalize every component of their mailings except for the absentee-ballot applications themselves. The trial record does not support the reliance on *Schwab*, 671 F. Supp. 3d 1230, and that case is on appeal, *appeal docketed*, No. 23-3100 (10th Cir. June 1, 2023), and other courts have disagreed. *See* [Doc. 244, ¶¶ 119–23].

21. Furthermore, the record demonstrates Plaintiffs' intent to communicate a pro-voting message through the entire absentee ballot application mailer, FOF ¶¶ 120, 122, 124, 125, 138, 198, 199, 201-203, 206, by enclosing personalized absentee ballot applications pre-filled with the recipient's name and address as they appear in the voter file, FOF ¶¶ 126, 130, 132, 215-218, and by sending multiple waves of these absentee ballot application mailers to eligible Georgians. FOF ¶¶ 191-93, 197, 234-38, 291, 298-99.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 120, 122, 124–26, 130, 132, 138, 191–93, 197–99, 201–03, 206, 215–18, 234–38, 291, 298–99.

22. Therefore, the Court concludes that Plaintiffs have established the first *Holloman* factor: Plaintiffs intend to convey a message by sending multiple waves of personalized absentee ballot application mailers.

RESPONSE: The trial record does not support this proposed conclusion, and the Court thus cannot conclude that Plaintiffs have established the first *Holloman* factor. Plaintiffs' conduct here facilitates voting but does not communicate a message, just like the Ninth Circuit held in rejecting a First Amendment claim that collecting ballots was expressive. *Feldman v. Ariz. Sec'y of State's Off.*, 843 F.3d 366, 392 (9th Cir. 2016) (holding that collecting ballots is not expressive conduct "[e]ven if ballot collectors intend to communicate that voting is important"). Of course, merely intending to send a message is not sufficient to be speech. *Holloman*, 370 F.3d at 1270. A message must be perceived as well. *Id.*

23. The Court concludes that a reasonable observer would understand some message from Plaintiffs' personalized absentee ballot application mailers.

RESPONSE: Plaintiffs offered no evidence at trial regarding what a reasonable observer would understand from Plaintiffs' mailings.

24. The second *Holloman* factor asks whether the surrounding circumstances would lead the reasonable observer to view the conduct as conveying some sort of message. *Holloman*, 370 F.3d at 1270; *FNB*, 901 F.3d at 1240.

RESPONSE: No response.

25. Importantly, Plaintiffs need only show "whether the reasonable person would interpret [the sending of a personalized absentee ballot application] as some sort of message, not whether an observer would necessarily infer a specific message." *Burns*, 999 F.3d at 1336-37 (emphasis in original) (citing *Holloman*, 370 F.3d at 1270); *FNB*, 901 F.3d at 1240 (same).

RESPONSE: In the realm of expressive conduct, the Eleventh Circuit confirms that "context matters." *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1237 (11th Cir. 2018) ("*Food Not Bombs*"). Not all conduct "accompanied by other speech" "loses its expressive nature," and thus "[t]he critical question is whether the explanatory speech is *necessary* for the reasonable observer to perceive *a* message from the conduct." *Id.* at 1243–44 (second emphasis added). Thus, the question does not only consider the interpretation from the observer's perspective.

26. To determine whether a reasonable observer would interpret some message from Plaintiffs' absentee ballot application mailers, the Eleventh Circuit instructs district courts to consider several factors to assess whether "surrounding circumstances would lead the reasonable observer to view the conduct as conveying some sort of message." *FNB*, 901 F.3d at 1242. These factors include (1) whether the conduct accompanies speech; (2) whether the activity will be open to all; (3) whether the activity takes place

in a traditional public forum; (4) whether the activity addresses an issue of public concern; and (5) the history of a particular symbol or type of conduct. *Burns*, 999 F.3d at 1344-45; *FNB*, 901 F.3d at 1242-44. These factors are neither exhaustive, nor do Plaintiffs need show all factors are present. *Burns*, 999 F.3d at 1346; Order on Motion for Summary Judgment, ECF No. 179 at 31.

RESPONSE: No response.

27. This Court agrees that on their face "it is overwhelmingly apparent to someone who receives plaintiff[s'] application[s] that plaintiff[s are] expressing a pro-advance mail voting message," because Plaintiffs would only be sending their mailers for that express purpose. *See Schwab*, 671 F. Supp. 3d at 1243.

RESPONSE: Plaintiffs presented no evidence that any reasonable observer would receive a "pro-advance mail voting message" from the *applications* sent by Plaintiffs, because Mr. Lopach explained that Plaintiffs' speech is: "We want you to vote. And here is but one tool that may make it easier[.]" 4/15/24 Trial Tr. 67:3–9 (Lopach). The messages (if any) are found in Plaintiffs' cover letter and envelope, with the application serving as a tool, but not as an inherently expressive or symbolic act. And Plaintiffs presented no evidence that a reasonable observer would perceive any message from sending a tool, separate and apart from the cover letter.

28. But even examining the *Food Not Bombs* factors, this Court concludes that a reasonable observer would understand some message from Plaintiffs' absentee ballot application mailers.

RESPONSE: Plaintiffs presented no evidence that a reasonable observer would understand some message, and they cite no such evidence.

29. The first *Food Not Bombs* factor looks to whether the expressive conduct accompanies speech. *See FNB*, 901 F.3d at 1242.

RESPONSE: The first *Food Not Bombs* factor involved whether there was distribution of literature or hanging banners. 901 F.3d at 1242.

30. Plaintiffs package their personalized absentee ballot application mailers with cover letters that indicate which organization sent the mailer and include encouraging language about the importance of voting and the benefits of voting by mail. FOF ¶¶ 124, 125, 128, 138, 198, 199, 202. These cover letters are tailored with different messaging depending on the recipient, and all indicate the specific recipient should complete the enclosed personalized application. FOF ¶¶ 30, 124, 125, 199, 202. That these cover letters are speech is not disputed. FOF ¶ 202.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 30, 124–25, 128, 138, 198–99, 202. The entirety of Plaintiffs' speech is in the cover letter or accompanying envelopes. 4/15/24 Trial Tr. 234:2–4 (Lopach). There is no message on the prefilled or duplicate

applications. And Plaintiffs have been able to communicate their pro-absentee-voting message in letters since SB 202 was enacted. 4/15/24 Trial Tr. 71:4–20, 83:25–85:3, 127:20–24, 155:10–12 (Lopach).

31. But Plaintiffs' mailers do more than merely accompany speech. Rather, the cover letters are a component of Plaintiffs' mailers which are intertwined with and reinforced by the other components, i.e. the absentee ballot application, outer envelope, and return envelope. FOF ¶¶ 117, 119, 120, 122, 124, 126, 127, 137, 138, 198, 199, 201-203, 206. And "conduct [does not] lose[] its expressive nature just because it is also accompanied by other speech." *See FNB*, 901 F.3d at 1243-44 (noting that to hold otherwise would render paraders' conduct non-expressive when it is accompanied by banners and signage).

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 117, 119, 120, 122, 124, 126–27, 137–38, 198–99, 201–03, 206. Plaintiffs presented no evidence that the cover letters and ballot applications cannot be separated and agreed that the application was just a tool. 4/15/24 Trial Tr. 66:2–3, 68:4–8 (Lopach).

32. The operative test is "whether the explanatory speech is necessary for the reasonable observer to perceive a message from the conduct." *Id*. at 1244 (emphasis in original). Where the expressiveness of conduct is not dependent on the accompanying printed or spoken words, even if those words are helpful

to clarify the specific message being conveyed, their presence enhances rather than diminishes the expressiveness of the conduct. See *id.* at 1242, 1244 (finding that inclusion of banners and the distribution of literature during events added context indicating the specific expressive nature but was unnecessary for an observer to infer some message from the sharing of food).

RESPONSE: Plaintiffs have presented no evidence regarding what a reasonable observer would understand from their mailers, and they acknowledge that their messages are found in other portions of their mailers—other than the application. 4/15/24 Trial Tr. 66:2–3, 68:4–8 (Lopach).

33. Plaintiffs have shown that the recipient of Plaintiffs' mail would necessarily "infer some sort of message" upon receiving a personalized and partially prefilled application in the mail, even without reading the cover letter. FNB, 901 F.3d at 1244; see FOF ¶¶ 215-218, 304. Over half a million Georgians used Plaintiffs' mailers to act on Plaintiffs' encouragement to vote absentee during the 2020 election cycle. FOF ¶ 189. Others unsubscribed from Plaintiffs' mailings, some even indicating they understood that receipt of an absentee ballot application in the mail was conveying a message, albeit one with which they disagreed. FOF ¶ 152. And Mr. Lopach explained how Plaintiffs' prefilled applications specifically convey a message to recipients to engage with the received application, especially where the recipient may not have a high level of English literacy or is neurodivergent. FOF ¶¶ 215, 304.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 152, 189, 215–18, 304. Plaintiffs have not presented evidence that voters inferred a message from an application, but rather that their cover letters and envelopes contain the entirety of their message.

34. That some message is understood to be conveyed by receipt via the mail of an absentee ballot application prefilled with the recipient's name and address is no less true just because the encouraging and instructive language contained in the cover letter might assist some recipients to better understand Plaintiffs' specific message. FNB, 901 F.3d at 1244. Whether the cover letters say "voting by mail is easy," FOF ¶¶ 124, 175, 152, or "worried about COVID-19, long lines, or bad weather? Join President Trump. Vote Absentee," FOF ¶ 112, or some other view concerning absentee voting "adds nothing of legal significance to the First Amendment analysis." *FNB*, 901 F.3d at 1244.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 112, 124, 152, 175. Plaintiffs did not identify any evidence showing that the absentee-ballot application itself communicates any message. Rather, Plaintiffs explained that other parts of the mailers communicate that: "We are speaking to you with an envelope addressed to you. We're speaking to you with a letter addressed to you talking about why, in the pandemic election, voting by mail was a safe way to engage with democracy, why voting by mail is convenient." 4/15/24 Trial Tr. 67:16–20 (Lopach). Each such message is

found in the cover letter or on an envelope, not on the absentee-ballot application itself. *Id.* at 234:2–4 (Lopach).

35. This is fundamentally different from where the expressiveness of conduct is "not created by the conduct itself but by the speech that accompanies it." *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 66 (2006) ("*FAIR*") (finding the accompanying speech—a letter advocating against military recruitment—was required to give the conduct its expressive nature because there was no reason to infer any message from off-campus military events absent the letter). Unlike locations chosen for hosting events—which are often selected for logistical, non-expressive reasons—mail is sent to convey a message. *Compare FAIR*, 547 U.S. at 66 *with infra* Parts III.B.iii, v; *see also* FOF ¶ 114.

RESPONSE: Plaintiffs' communications are the same as the situation in *Rumsfeld*, which involved conduct accompanied by speech. As the Court previously recognized, the necessity of the cover letters as "'explanatory speech'" is "'strong evidence'" that the application form is "not so inherently expressive" as to merit First Amendment protection. Order at 23, 26 [Doc. 131] (citing *Rumsfeld*, 547 U.S. at 66). Mass mailing prefilled state forms are "clearly distinguishable" from burning a flag, holding a sit-in, or sharing food as part of a demonstration. *Id.* at 25; *Rumsfeld*, 547 U.S. at 66; *Food Not Bombs*, 901 F.3d at 1244.

36. Plaintiffs have shown that their absentee ballot application mailers are intertwined with and supported by accompanying speech, which distinguishes the mailers from other non-expressive conduct. The Court concludes that the first *Food Not Bombs* factor weighs heavily in favor of Plaintiffs.

RESPONSE: Plaintiffs have presented no evidence that the absentee-ballot applications they send voters are intertwined with speech. There is no evidence on which this Court can conclude that Plaintiffs have shown the first *Food Not Bombs* factor. *See* [Doc. 244, ¶ 125].

37. The second *Food Not Bombs* factor asks whether the activity is open to everyone. *FNB*, 901 F.3d at 1242.

RESPONSE: No response.

38. Here, "all persons are free to send correspondence to private homes through the mails." *Consol. Edison Co. of New York v. Pub. Serv. Comm'n of New York*, 447 U.S. 530, 543 (1980).

RESPONSE: No response.

39. Similarly, a copy of Georgia's absentee ballot application is publicly available, FOF ¶ 129, and voters' information for prefilling applications is available to the public for purchase from the Secretary. FOF ¶¶ 29, 51, 131.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 29, 51, 129, 131.

40. Finally, Plaintiffs have shown that many organizations engage Georgia voters by sending absentee ballot application mailers. FOF ¶¶ 107-114. And Plaintiffs themselves send millions of absentee ballot application mailers to Georgia voters each election year. FOF ¶¶ 186-188, 195.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 107–14, 186–88, 195. While other organizations may send absentee-ballot application mailers, Plaintiffs target small subsets of Georgia voters—people of color, young people, and unmarried women, as well as people who share Plaintiffs' values. 4/15/24 Trial Tr. 188:25–189:4 (Lopach). And even those groups are not blanketed by Plaintiffs' mailings, as Plaintiffs only send their mailings to subsets of those groups. *Id.* at 188:12–24 (Lopach); [Doc. 244, ¶ 126].

41. This is true even though Plaintiffs target their mailers to specific voters, especially because their message is that all Georgia voters can and should use absentee voting, including Plaintiffs' target populations that have traditionally faced trouble participating in our democracy, and that these populations should take advantage of no-excuse absentee voting in order to safely and effectively cast their ballots. FOF ¶¶ 11-15, 18-23, 32, 56, 242. Indeed, Intervenor-Defendants similarly target their mailers to specific

recipients. FOF ¶ 110. The fact that Plaintiffs target their message to voters who traditionally have faced greater barriers to voting and send their pro-mail voting message through the mail itself only underscores that Plaintiffs' activities are "open to everyone": Plaintiffs seek to expand the reach of vote by mail so that every voter can participate in Georgia's election process. FOF ¶¶ 12-15, 18-23, 31, 32, 190.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 11–15, 18–23, 31–32, 56, 110, 190, 242. Plaintiffs cannot have it both ways: their activities can either be targeted or open to all, but they cannot be both. Plaintiffs target small subsets of Georgia voters—people of color, young people, and unmarried women, as well as people who share Plaintiffs' values. 4/15/24 Trial Tr. 188:25–189:4 (Lopach). And even those groups are not blanketed by Plaintiffs' mailings, as Plaintiffs only send their mailings to subsets of those groups. *Id*. at 188:12–24 (Lopach). As a result, they do not "seek" for "every voter" to participate because they single out particular types of voters as the audience for their conduct.

42. That absentee ballot application mailers are a method of communication widely employed by various viewpoints "has social implications" that would lead a reasonable observer to understand a message is being conveyed by the mailers. *FNB*, 901 F.3d at 1242.

RESPONSE: Plaintiffs presented no evidence of "social implications" that would lead a reasonable observer to understand a message, because they did not present any evidence regarding what a reasonable observer would understand.

43. The Court concludes that mailing personalized absentee ballot applications is an activity that is open to everyone and the second *Food Not Bombs* factor weighs heavily in favor of Plaintiffs.

RESPONSE: The Court should conclude that the second *Food Not Bombs* factor weighs heavily against Plaintiffs because their conduct is not open to all but is specifically targeted at particular categories of individuals. *See* [Doc. 244, ¶ 126].

44. The third *Food Not Bombs* factor asks whether the activity takes place in a traditional public forum or a location "historically associated with the exercise of First Amendment rights." *FNB*, 901 F.3d at 1242 (internal citation and quotation marks omitted).

RESPONSE: No response.

45. The United States Postal Service is a vehicle for communication that is usable by any member of the public. *See Consol. Edison Co. of New York,* 447 U.S. at 543. And postal mail is certainly a location associated with the exercise of First Amendment rights. *See Rowan v. U.S. Post Off. Dep't,* 397 U.S. 728, 737 (1970) (recognizing the "mailer's right to communicate"); *Martin*

v. City of Struthers, Ohio, 319 U.S. 141, 146 (1943) (recognizing the First Amendment right to "distribute information to every citizen wherever he desires").

RESPONSE: Use of the mail service is not an unfettered right, and thus Plaintiffs' conduct is not conveyed in a traditional public forum. "There is neither historical nor constitutional support for the characterization of a letterbox as a public forum." *U.S. Postal Serv. v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 128 (1981). Mail distribution is also not "similar" to a traditional public forum. The key difference is that public fora are places where multiple people can gather and communicate with each other. *See, e.g.*, *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45 (1983) (defining a public forum as "places which by long tradition or by government fiat have been devoted to assembly and debate"); *Bloedorn v. Grube*, 631 F.3d 1218, 1234 (11th Cir. 2011) (same); *Keister v. Bell*, 29 F.4th 1239, 1252 (11th Cir. 2022), *cert. denied mem.*, 143 S. Ct. 1020 (2023) (same). And that is not true of the forum alleged here. In addition, the other cases cited by Plaintiffs are also factually distinguishable and inapplicable to this case. For instance, *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Comm'n of N.Y.,* 447 U.S. 530 (1980), concerned a controversial materials utilities regulation, and *Martin v. City of Struthers,* 319 U.S. 141 (1943), pertained to a federal government's war bonds campaign involving door-to-door distribution.

46. Plaintiffs' message is indisputably communicated via postal mail, and intends to demonstrate the reliability and safety of voting by mail. FOFS ¶¶ 22, 26, 28, 30, 125, 175, 190, 232.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 22, 26, 28, 30, 125, 175, 190, 232.

47. The Supreme Court has long recognized the postal mail as "an indispensable adjunct of every civilized society and . . . imperative to a healthy social order," and the postal mail is widely understood to be a method of communicating political literature. *Rowan,* 397 U.S. at 736; *accord Lamont v. Postmaster Gen. of U. S.*, 381 U.S. 301, 305 (1965) (regarding the use of mail to distribute "communist political propaganda"); *Consol. Edison Co. of New York*, 447 U.S. at 541 (regarding the distribution of political mail by a utility company); FOF ¶¶ 114, 116.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 114, 116. While postal mail is an important part of society, Plaintiffs' conduct is not conveyed in a traditional public forum because "[t]here is neither historical nor constitutional support for the characterization of a letterbox as a public forum." *Council of Greenburgh Civic Ass'ns*, 453 U.S. at 128; [Doc. 244, ¶ 127].

48. The importance of postal mail as a means of communication dates back to the Founding: in a 1791 address to Congress, President George

Washington declared the "importance of the post office and post roads" with respect to "the expedition, safety and facility of communication" and noted the postal mail's "instrumentality in diffusing a knowledge of the laws and proceedings of the Government, which, while it contributes to the security of the people, serves also to guard them against the effects of misrepresentation and misconception." FOF ¶¶ 115-116. In a subsequent address the following year, President Washington again emphasized "the importance of facilitating the circulation of political intelligence and information" via the mail. FOF ¶116.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 115–16. Whether the Founders thought mail was important is irrelevant to the issues before this Court. The relevant question is whether the act of mailing an absentee-ballot application has been understood for millennia to convey a message, which it has not, and Plaintiffs provided no evidence suggesting otherwise.

49. Although the choice of location alone is not dispositive, it is nevertheless an important factor in the factual context and environment which would lead a reasonable observer to understand some message. *FNB*, 901 F.3d at 1242 (quotation marks omitted).

RESPONSE: No response.

50. Plaintiffs have established that the forum through which they communicate, the United States Postal Service, is a location historically associated with First Amendment rights. As such, the Court concludes that the third *Food Not Bombs* factor weighs heavily in favor of Plaintiffs.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed COL ¶¶ 44 through 49, which confirm that Plaintiffs have not and cannot satisfy the third *Food Not Bombs* factor. *See* [Doc. 244, ¶¶ 127–28].

51. The fourth *Food Not Bombs* factor asks whether the activity addresses a matter of public concern. *FNB*, 901 F.3d at 1242.

RESPONSE: No response.

52. There is no real dispute that Plaintiffs' absentee ballot application mailers address a matter of public concern: absentee voting in Georgia. Plaintiffs have demonstrated by a preponderance of the evidence that the public, including voters, Defendants, and Intervenor-Defendants, consider the topic to be a matter of considerable public debate. FOF ¶¶ 110, 111, 112, 175, 190, 232.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 110–12, 175, 190, 232. There is no dispute that voting generally is a matter of public concern. But Plaintiffs' conduct relates to Georgia voters deciding to vote specifically by absentee ballot, which is not itself a matter of public concern. As this Court previously concluded, mass-

mailing of prefilled or duplicate absentee-ballot applications "do[es] not require the type of interactive debate and advocacy that the Supreme Court found constituted core political speech in *Meyer*." *VoteAmerica v. Raffensperger*, 609 F. Supp. 3d 1341, 1355 (N.D. Ga. 2022); [Doc. 244, ¶ 129].

53. That Plaintiffs' message pertains to a matter of public debate "adds to the likelihood that the reasonable observer would understand" that Plaintiffs intend to convey a message. *FNB*, 901 F.3d at 1243. The Court concludes that the fourth *Food Not Bombs* factor weighs heavily in favor of Plaintiffs.

RESPONSE: For the reasons stated in response to Plaintiffs' Proposed COL ¶ 52, Plaintiffs are not engaged in a matter of public concern and the fourth *Food Not Bombs* factor does not weigh in favor of Plaintiffs.

54. The final *Food Not Bombs* factor indicates that the history of a particular symbol or type of conduct is instructive in determining whether the reasonable observer may infer some message when viewing it. *FNB*, 901 F.3d at 1243.

RESPONSE: The history of a particular symbol referred to in *Food Not Bombs* is one that conveys a message over millennia. *Food Not Bombs*, 901 F.3d at 1243 (citing *Texas v. Johnson*, 491 U.S. 397, 405 (1989)). Plaintiffs cannot and did not prove at trial that the mere act of mailing an absentee-ballot application has ever been understood in itself to convey a message, let

alone a millennia-spanning one. Rather, Plaintiffs' prefilled and duplicate applications were about facilitating voting, not sending a message. In the words of Mr. Lopach, Plaintiffs' speech is: "We want you to vote. And here is but one tool that may make it easier," 4/15/24 Trial Tr. 67:3–9 (Lopach). The mere provision of that "tool," separate and apart from Plaintiffs' cover letters and envelopes, does not itself constitute a message. [Doc. 244, ¶ 131].

55. As the Supreme Court recognized in 1971, "the use of the mails is almost as much a part of free speech as the right to use our tongues." *Blount v. Rizzi*, 400 U.S. 410, 416 (1971). And as noted *supra*, *see* Part III.B.iii, postal mail has long been a forum for the communication of political speech.

RESPONSE: Again, as stated in responses to Plaintiffs' Proposed COL ¶¶ 44–50, the mail is not a traditionally recognized public forum. And the Supreme Court's decision in *Blount v. Rizzi*, 400 U.S. 410 (1971), addressed an action against the U.S. Postmaster General under the Postal Reorganization Act involving halting the use of mail services and money orders, which has nothing to do with the mailing of absentee-ballot applications, as in this case.

56. Courts have recognized that organizations have long engaged in the conduct of distributing voter registration applications to convey a pro-voting message. *See, e.g.*, *Voting for Am., Inc.*, 732 F.3d at 396; *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 700-06 (N.D. Ohio 2006); *League of Women Voters of Fla. v. Cobb*, 447 F. Supp. 2d 1314, 1333 (S.D. Fla. 2006).

RESPONSE: Voter registration drives are vastly different from the conduct in this case. In *League of Women Voters of Florida v. Cobb*, 447 F. Supp. 2d 1314 (S.D. Fla. 2006), cited by Plaintiffs, the registration drives included activities meant to "persuade others to vote, educate potential voters about upcoming political issues, communicate their political support for particular issues" and promote "shared political, economic, and social positions," *id.* at 1333. That is a far cry from placing absentee-ballot applications in the mail in an envelope with a cover letter.

57. Similarly, Plaintiffs have established that political campaigns, political parties, and advocacy groups regularly communicate via absentee ballot application mailers. FOF ¶¶ 107-114, 292.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 107–14, 292. The evidence does not demonstrate that political campaigns and advocacy groups speak through absentee-ballot *applications*. Rather, like Plaintiffs, they communicate their messages through cover letters and envelopes. 4/15/24 Trial Tr. 67:16–20, 233:9–12 (Lopach). As the Court previously concluded, mass-mailing of prefilled or duplicate absentee-ballot applications itself "do[es] not require the type of interactive debate and advocacy that the Supreme Court found constituted core political speech in *Meyer*." *VoteAmerica*, 609 F. Supp. 3d at 1355.

58. Moreover, the practice of prefilling application forms is not unique to political mail; tax preparation services and online shopping platforms, for example, regularly prefill information to facilitate completion of the form. FOF ¶ 227. Similarly, non-political mailers—such as professional and academic recruitment communications—often include application forms as part of their encouraging message. *See Castaneda by Castaneda v. Pickard*, 781 F.2d 456, 469 (5th Cir. 1986).

RESPONSE: State Defendants incorporate their response to Plaintiffs' Proposed FOF ¶ 227. Plaintiffs' evidence has shown that they communicate their messages through their cover letters and envelopes, not by prefilling an application. 4/15/24 Trial Tr. 67:16–20, 233:9–12 (Lopach). As the Court previously concluded, mass-mailing of prefilled or duplicate absentee-ballot applications "do[es] not require the type of interactive debate and advocacy that the Supreme Court found constituted core political speech in *Meyer*." *VoteAmerica*, 609 F. Supp. 3d at 1355.

59. That the history of the mails as a method of communication is so long and pervasive "is instructive in determining whether the reasonable observer may infer some message when viewing it." *FNB*, 901 F.3d at 1243 (quotation marks omitted).

RESPONSE: The history of the postal system is not sufficient to determine if an observer may infer a message from a communication. Plaintiffs

failed to introduce any evidence showing that a reasonable recipient would have understood or inferred Plaintiffs' mailings to communicate any message specifically from their inclusion of an absentee-ballot application. In fact, Mr. Lopach testified that Plaintiffs would never send only an absentee-ballot application because the application on its own would be confusing to recipients. 4/15/24 Trial Tr. 233:9–17 (Lopach). To the extent a voter understands a message, it is from the other parts of the mailer. *See* 4/17/24 Trial Tr. 73:5–12 (Watson). Moreover, First Amendment protections extend only to "conduct that is inherently expressive" because "'conduct can[not] be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea.'" *Rumsfeld*, 547 U.S. at 65–66 (quoting *United States v. O'Brien*, 391 U.S. 367, 376 (1968)); *see also Burns*, 999 F.3d at 1338 (collecting cases with expressive conduct). Here, as Plaintiffs stated, "the cover letter is expressive." 4/15/24 Trial Tr. 30:8 (Lopach). "[I]t is expressive because it's clearly words on paper that's expressing that voting is easy and vote by mail is safe and secure." *Id.* at 30:12–14 (Lopach). But there are no such words on the absentee-ballot application, and it is not "inherently expressive." *Rumsfeld*, 547 U.S. at 66.

60. The Court concludes that the final *Food Not Bombs* factor weighs heavily in favor of Plaintiffs.

RESPONSE: As discussed in responses to Plaintiffs' Proposed COL ¶¶ 54–59, Plaintiffs have failed to present any evidence that the final *Food Not Bombs* factor weighs in their favor.

61. And while each of the *Food Not Bombs* factors need not weigh in favor of Plaintiffs' conduct being expressive, *Burns*, 999 F.3d at 1346, the Court finds that here they do.

RESPONSE: As discussed in responses to Plaintiffs' Proposed COL ¶¶ 18–59, Plaintiffs have failed to present any evidence that any of the *Food Not Bombs* factors weigh in their favor.

62. The *Food Not Bombs* factors are not "exclusive," *Burns*, 999 F.3d at 1344-46, and "[t]here may be other factors that are relevant to whether [mailing a personalized absentee ballot application] is expressive conduct protected by the First Amendment." *Id.* at 1346. The Court finds that additional factors further establish the expressiveness of Plaintiffs' prefilled absentee ballot application mailers.

RESPONSE: For the reasons set forth in responses to Plaintiffs' Proposed COL ¶¶ 63–66, Plaintiffs have not established any additional factors showing that their prefilled absentee-ballot application mailers communicated a message.

63. Plaintiffs have established that almost 640,000 voters acted on their message and applied to vote using applications they received from

Plaintiffs during the 2020 and 2021 election cycle. FOF ¶¶ 189. This "strongly suggests" that those Georgians understood Plaintiffs' pro-absentee voting message. *Schwab*, 671 F. Supp. 3d at 1242.

RESPONSE: State Defendants incorporate their response to Plaintiffs' Proposed FOF ¶ 189. Plaintiffs provided no evidence that Plaintiffs' mailers caused anyone in Georgia to vote by absentee ballot. Further, *Schwab*, 671 F. Supp. 3d 1230, is on appeal, *appeal docketed*, No. 23-3100 (10th Cir. June 1, 2023), and other courts have disagreed [Doc. 244, ¶¶ 119–23].

64. The evidence further indicates that at least some recipients who did not agree with or act upon Plaintiffs' message nevertheless conveyed that they understood it. FOF ¶¶ 152, 258.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 152, 258.

65. Overall, Plaintiffs have established that a reasonable observer would understand that Plaintiffs are conveying a message via their absentee ballot application mailers. Thus, the second *Holloman* factor has been met.

RESPONSE: The evidence in the record demonstrates that other parts of Plaintiffs' mailers are needed to explain the "message" purportedly conveyed by the inclusion of a ballot application. The Supreme Court has held that the necessity of "explanatory speech" to convey a message is "strong evidence" that

the conduct at issue is "not so inherently expressive" that it warrants First Amendment protections. *Rumsfeld*, 547 U.S. at 66. As a result, Plaintiffs have not presented evidence that any reasonable observer would understand they are conveying a message merely by sending a ballot application.

66. Therefore, the Court concludes that Plaintiffs' absentee ballot application mailers are expressive conduct.

RESPONSE: For the reasons stated in responses to Plaintiffs' Proposed COL ¶¶ 63–65, Plaintiffs' absentee-ballot application mailers are not expressive conduct. *See* [Doc. 244, ¶¶ 111–31].

67. The Ballot Application Restrictions are subject to strict scrutiny both because they abridge Plaintiffs' core political speech by reducing the overall quantum of speech and violating their "right not only to advocate their cause but also to select what they believe to be the most effective means for so doing," *Meyer*, 486 U.S. at 424, and because they are content- and viewpoint-discrimination.

RESPONSE: Under Supreme Court precedent, "core political speech" involves "interactive communication concerning political change" and necessarily requires a discussion about a proposal, its merits, and why people support or oppose it. *Meyer v. Grant*, 486 U.S. 414, 421–22 (1988). Here, as the Court previously concluded, mass-mailing of prefilled or duplicate absentee-ballot applications "do[es] not require the type of interactive debate and

advocacy that the Supreme Court found constituted core political speech in *Meyer*." *VoteAmerica*, 609 F. Supp. 3d at 1355. The evidence does not demonstrate that the challenged provisions should be subject to strict scrutiny because they are not core political speech or content- and viewpoint-based discrimination. *See* [Doc. 244, ¶¶ 132–41].

68. As Representative Fleming, a key sponsor of SB 202, acknowledged, prohibitions on sending unsolicited absentee ballot applications "get[s] into a freedom of speech issue." FOF ¶ 273.

RESPONSE: State Defendants incorporate their response to Plaintiffs' Proposed FOF ¶ 273.

69. Because the information that Plaintiffs convey, including their dissemination of personalized absentee ballot applications, (1) is about absentee voting, (2) pertains to the voting process, and (3) is intended to encourage the recipient to participate, it is core political speech. *League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 720 (M.D. Tenn. 2019) ("Encouraging others to register to vote is pure speech, and, because that speech is political in nature, it is a core First Amendment activity") (quotation marks omitted); *see also* FOF ¶¶ 117, 119, 122, 124-26, 130, 132, 198-99, 201-03, 206, 216.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 117, 119, 122, 124–26, 130, 132, 198–99, 201–03, 206, 216.

Plaintiffs' prefilling of applications is not "core political speech" because it does not involve "interactive communication concerning political change" or necessarily require[] a discussion about a proposal, its merits, and why people support or oppose it. *Meyer*, 486 U.S. at 421–22. Here, as the Court previously concluded, mass-mailing prefilled or duplicate absentee-ballot applications "do[es] not require the type of interactive debate and advocacy that the Supreme Court found constituted core political speech in *Meyer*." *VoteAmerica*, 609 F. Supp. 3d at 1355.

70. In fact, Plaintiffs' "[e]ncourag[ement of] others to vote or engage in the political process is the essence of First Amendment expression." Order on Motion for Summary Judgment, ECF No. 179 at 24. And First Amendment protection for this encouragement is therefore "at its zenith." *Meyer*, 486 U.S. 414, at 425; *see also McIntyre*, 514 U.S. at 346 (finding core political speech, "the category of speech [which] occupies the core of the protection afforded by the First Amendment").

RESPONSE: As noted above, "core political speech" involves "interactive communication concerning political change" and necessarily requires a discussion about a proposal, its merits, and why people support or oppose it. *Meyer*, 486 U.S. at 421–22. Here, as the Court previously concluded, mass-mailing prefilled or duplicate absentee-ballot applications "do[es] not require the type of interactive debate and advocacy that the Supreme Court

found constituted core political speech in *Meyer*." *VoteAmerica*, 609 F. Supp. 3d at 1355. Sending prefilled and duplicate applications also does not involve a candidate or issue on the ballot like in *McIntyre*, and thus Plaintiffs' actions are not core political speech.

71. The First Amendment protects against "reduc[tions of] the total quantum of speech," *Meyer*, 486 U.S. at 423, including those that limit "the audience which proponents [of absentee voting] can reach," as happens here. *VoteAmerica*, 576 F. Supp. 3d at 889.

RESPONSE: Plaintiffs' "expression" contained in prefilled or duplicate absentee-ballot applications focuses solely on the individual voter's choice to use Plaintiffs' mass-mailed forms to apply to vote by absentee ballot, not on policy or partisan issues. Plaintiffs are not limited in who they can reach with their message because they can send an unlimited number of letters to voters. Further, the voters' subsequent interaction is then with their county election office, not with Plaintiffs. 4/15/24 Trial Tr. 67:25–68:3 (Lopach).

72. Plaintiffs' amount of speech regarding absentee voting is cut roughly in half where they cannot send a second wave of mailers encouraging absentee voting. FOF ¶¶ 192-93, 197, 234, 238, 291, 294, 298-99. Specifically, Plaintiffs' chosen method of communication is to use inline printing to produce and mail multiple waves of absentee ballot application mailers to eligible recipients. FOF ¶¶ 161-62, 192, 234, 238. The only way that

Plaintiffs can comply with the Mailing List Restriction under their chosen method of communication is by sending one wave of mailers at the beginning of the absentee ballot application cycle, which prevents Plaintiffs from communicating with a broad swath of voters. FOF ¶¶ 193, 290-91, 294, 298.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 161–62, 192–93, 197, 234, 238, 290–91, 294, 298–99. The evidence does not demonstrate that Plaintiffs can only send a single mailing or cannot communicate with voters, as Mr. Lopach incorrectly understood the requirements of the Anti-Duplication Provision. 4/15/24 Trial Tr. 153:9–24, 214:6–20, 237:7–12 (Lopach). Further, for duplicate applications, Mr. Waters explained that any increase in per-unit cost resulting from removing recipients who already requested to vote absentee would be made up for by not having to pay for postage to that recipient. 4/17/24 Trial Tr. 176:9–16 (Waters).

73. Likewise, Plaintiffs' audience is smaller when they cannot send a second wave later in the election cycle, and they are foreclosed from sending even a single round of their absentee ballot application mailers to voters who registered or updated their registration after their initial mailing for fear of incurring steep and significant liability. FOF ¶ 291.

RESPONSE: State Defendants incorporate their response to Plaintiffs' Proposed FOF ¶ 291. The evidence does not demonstrate that Plaintiffs can send only a single mailing or cannot communicate with voters, as Mr. Lopach

incorrectly understood the requirements of the Anti-Duplication Provision. 4/15/24 Trial Tr. 153:9–24, 214:6–20, 237:7–12 (Lopach). Further, for duplicate applications, Mr. Waters explained that any increase in per-unit cost resulting from removing recipients who already requested to vote absentee would be made up for by not having to pay for postage to that recipient. 4/17/24 Trial Tr. 176:9–16 (Waters).

74. The First Amendment also protects speakers' right to "advocate their cause" through "what they believe to be the most effective means for so doing." *Meyer*, 486 U.S. at 424. Plaintiffs believe, based on their experience designing and operating voter mobilization programs nationwide, especially during the 2020 presidential election, that sending two to three waves of absentee ballot mailers with personalized absentee ballot applications is their most effective way of communicating their pro-absentee voting message. FOF ¶¶ 191-92, 216. 218. Plaintiffs' belief alone is sufficient, *Meyer*, 486 at 424, but here it is objectively justified. FOF ¶¶ 221-22, 224-27, 235-38. Specifically, empirical studies confirm that sending multiple waves of prefilled applications increases the likelihood that a recipient will act on that message. FOF ¶¶ 224, 226, 236. Dr. Green likewise testified that including prefilled absentee ballot applications increases the efficacy of the communication by reducing the transaction costs for the voter-recipient. FOF ¶¶ 221-22, 224-27. Finally, Plaintiffs own testing confirms that the most effective means of

encouraging voters to act on their message about the importance of voting is by sending prefilled absentee ballot application mailers. FOF ¶¶ 215-16, 218, 233.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 191–92, 215–16, 218, 221–22, 224–27, 233, 235–38.

75. This First Amendment protection applies even if some do not like or agree with Plaintiffs' expressed pro-absentee voting message, *see Holloman*, 370 F.3d at 1274-75 ("The fact that other [individuals] may have disagreed with either [the plaintiff's] act or the message it conveyed is irrelevant to our analysis."), as a message about voting is "valuable to the democratic process" even if disagreed with or ignored. Order on Motion for Summary Judgment, ECF No. 179 at 24-25 n.18 (citing *Buckley*, 525 U.S. at 211 n.3 (Thomas, J., concurring)). That a speaker's message is entitled to protection even when ignored underscores that the protection is not conditioned on the speech being interactive or the listener speaking back. *See McIntyre*, 514 U.S. at 337-39, 344-48 (applying core political speech protections to anonymous leafletting); *see also Bolger v. Youngs Drug Prod. Corp.*, 463 U.S. 60 (1983) (applying broad speech protections to direct mailers); *Consol. Edison Co.*, 447 U.S. at 532 (same).

RESPONSE: As explained in responses to Plaintiffs' Proposed COL ¶¶ 63–74, Plaintiffs' conduct is not core political speech and thus strict scrutiny does not apply.

76. Here, many did not ignore Plaintiffs' mailers, instead either acting on Plaintiffs' encouragement, FOF ¶¶ 189, 195, or expressing their disagreement with Plaintiffs' message, FOF ¶ 152. Plaintiffs presented credible evidence that some voters, upon receiving their mailings, respond by requesting to unsubscribe from Plaintiffs' message and expressing, *inter alia*, that "I do not agree with you encouraging people to vote by mail." FOF ¶ 152.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 152, 189, 195.

77. Where, as here, core political speech is implicated, this Court must be "vigilant" to "guard against undue hindrances to political conversation[] and the exchange of ideas." *Buckley*, 525 U.S. at 192. Courts assessing First Amendment challenges must be "properly skeptical of the government's ability to calibrate the propriety and utility" of protected speech and expressive conduct. *Otto v. City of Boca Raton, Fla.*, 981 F.3d 854, 868 (quoting *Wollschlaeger,* 848 F.3d at 1308). As such, "[t]he proper test to be applied to determine the constitutionality of restrictions on 'core political speech' is strict

scrutiny." *Weaver v. Bonner*, 309 F.3d 1312, 1319 (11th Cir. 2002) (quoting *McIntyre*, 514 U.S. at 346).

RESPONSE: As shown in responses to Plaintiffs' COL ¶¶ 63–76, Plaintiffs' conduct is not core political speech. In addition, the cases Plaintiffs cite are factually distinguishable as neither pertains to election law generally or absentee-ballot applications in particular, and neither supports any finding that Plaintiffs' conduct constituted core political speech or that strict scrutiny should apply here.

78. The Court therefore concludes that because the Ballot Application Restrictions curtail Plaintiffs' core political speech, the appropriate standard of review is strict scrutiny.

RESPONSE: For the reasons stated in responses to Plaintiffs' Proposed COL ¶¶ 63–77, Plaintiffs' conduct is not core political speech requiring strict scrutiny review.

79. Strict scrutiny is also required because the Ballot Application Restrictions are content- and viewpoint-based. A law is "content based if [it] applies to particular speech because of the topic discussed," *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015), or when it defines the "category of covered documents . . . by their content," *McIntyre*, 514 U.S. at 345; *see also Buckley*, 525 U.S. at 209 (Thomas, J., concurring).

RESPONSE: The challenged provisions are content-neutral because they focus on timing and "placement," not "subject matter." The Prefilling Prohibition allows Plaintiffs to convey information about a voter from the State's voter files; it just requires that information to be conveyed somewhere other than on the absentee-ballot application. Similarly, the Anti-Duplication Provision regulates timing: Plaintiffs may send all the messages they wish to encourage a voter to vote by absentee ballot. But if they want to send a ballot application to the voter—which can result in issuance of a live ballot—they must do so before the voter has submitted an application. Moreover, there is no dispute that the challenged provisions allow alternative channels of expression for Plaintiffs. They are permitted to send blank absentee-ballot applications, as they did twice in 2020 and once in 2022. They may also send follow-up letters to voters who already applied for an absentee ballot or who voted absentee to congratulate them or share another message. And Plaintiffs may send mailers without an absentee-ballot application to voters who have not yet voted.

80. The Ballot Application Restrictions dictate the content that Plaintiffs are prohibited from including in their messages and constrict the timing when Plaintiffs can speak, FOF ¶¶ 8, 9, 28, 118, 193-94, 294, 298-303, thereby "inhibit[ing] communication with voters about proposed political change and eliminat[ing] voting advocacy by plaintiffs . . . based

on the content of their message." *VoteAmerica*, 576 F. Supp. 3d at 888. They are impermissibly "premised on the message a speaker conveys," *In re Georgia SB 202*, 1:21-mi-55555-JPB, 2022 WL 3573076, *13-14 (N.D. Ga. Aug. 18, 2022), and hinge explicitly on the content of their communications. Their enforcement necessarily requires examination of "the content of the message" Plaintiffs' mailers convey to know whether the law has been violated and "[l]aws that 'cannot be justified without reference to the content of the regulated speech," require strict scrutiny. *Honeyfund.com*, 94 F.4th at 1277-80 (citing *Reed*, 576 U.S. at 163-64).

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 8, 9, 28, 118, 193–94, 294, 298–303. The challenged provisions do not restrict Plaintiffs' speech because the application conveys no message, and Plaintiffs' true messages are communicated through their other components of their mailings. *Rumsfeld*, 547 U.S. at 66. No examination of the content is required because Plaintiffs are allowed to convey information about a voter from the State's voter files, but they must simply convey that information somewhere other than on the absentee-ballot application.

81. The scope of the Restrictions is also defined by the category of covered documents, applying only to mailers that include applications and only those that are prefilled. FOF ¶¶ 8-9. As such, "the category of covered documents is defined by their content—only those publications containing

speech designed to influence the voters in an election need bear the required markings" and the Restrictions must consequently survive strict scrutiny. *McIntyre*, 514 U.S. at 345-46.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 8–9. Sending prefilled and duplicate applications does not involve a candidate or issue on the ballot like in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 345–46 (1995). Further, no examination of the content is required because Plaintiffs are allowed to convey information about a voter from the State's voter files but they must convey that information somewhere other than on the absentee-ballot application.

82. The Restrictions apply solely to views advocating absentee voting because only those communications would include an application and one that is personalized; they impose no limits on mailers against absentee voting because that contrary message would not include any prefilled application. *Cf.* FOF ¶¶ 113-14, 208-09. A law that "specifically applies a burden to the speech of those who 'solicit' others to" vote absentee, "but not those who solicit them not to do so" is unconstitutional viewpoint discrimination. *SD Voice v. Noem*, 432 F. Supp. 3d 991, 996 (D.S.D. 2020).

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 113–14, 208–09. As discussed previously, prefilling information on an application does not communicate any message because the

application must be accompanied by other speech. The decision in *SD Voice v. Noem*, 432 F. Supp. 3d 991 (D.S.D. 2020), is not applicable because it involved speech by solicitors seeking support for ballot initiatives, not those encouraging voting by absentee ballot, and was rooted in the lack of definition in South Dakota law of certain key terms. *See id.* at 996, 999.

83. Because this Court finds the Ballot Application Restrictions to be content- and viewpoint-based discrimination, they are therefore subject to strict scrutiny. *Reed*, 576 U.S. at 163-64.

RESPONSE: Plaintiffs presented no evidence of content- or viewpoint-based discrimination, so the challenged provisions are not subject to strict scrutiny. *New Ga. Project v. Raffensperger*, 484 F. Supp. 3d 1265, 1300–01 (N.D. Ga. 2020) (citing *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974)).

84. Strict scrutiny is "well-nigh insurmountable," *Meyer*, 486 U.S. at 425, and restrictions like those at issue here that burden expression based on a communication's contents "are presumptively unconstitutional." *Reed*, 576 U.S. at 163.

RESPONSE: The challenged provisions do not burden expression and are not core political speech. But even if they did, they satisfy strict scrutiny because they are narrowly tailored to serve compelling state interests. *One World One Family Now v. City of Miami Beach*, 175 F.3d 1282, 1286 (11th Cir.

1999) (citing *Perry Educ. Ass'n*, 460 U.S. at 45) (content-based regulation); *Meyer*, 486 U.S. at 422–23 (core political speech).

85. Under strict scrutiny, the government bears the burden to show that the restriction is "(1) narrowly tailored to serve (2) a compelling state interest." *Weaver*, 309 F.3d at 1319; *accord Otto*, 981 F.3d at 868.

RESPONSE: No response.

86. Here, although the State Defendants have identified certain interests that are compelling in the abstract, that alone is not sufficient. "To survive strict scrutiny, they must prove that the [challenged restrictions] 'further' that compelling interest and are narrowly tailored to that end." *Otto*, 981 F.3d at 868 (citing *Reed*, 576 U.S. at 163). This is a "demanding standard." *Id.* at 868.

RESPONSE: No response.

87. As explained further below, the Court concludes that the State Defendants have not shown a sufficient nexus between Ballot Application Restrictions and the government interests they identified, nor have they demonstrated that the Ballot Application Restrictions are narrowly tailored to achieve those ends. Therefore, the Ballot Application Restrictions do not satisfy strict scrutiny and are unconstitutional.

RESPONSE: State Defendants presented abundant evidence of state interests served by the challenged provisions that are narrowly tailored to

further those interests. The challenged provisions are narrowly tailored to the State's compelling interests because they are necessary to address concerns including threats to actual and perceived election integrity, burdens on election officials, and sources of voter confusion and frustration such as unauthorized use of personal information, incorrect data, and sending duplicate forms after a voter has already applied. *See* [Doc. 244, ¶¶ 142–210]. As a result, they satisfy strict scrutiny.

88. State Defendants have identified decreasing voter confusion, combatting complaints of voter fraud, and preserving election integrity as the compelling state interests that allegedly justify the Ballot Application Restrictions. FOF ¶ 269.

RESPONSE: State Defendants incorporate their response to Plaintiffs' Proposed FOF ¶ 269.

89. It is well-settled that, as a general matter, these are compelling state interests. *See Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006)); *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2340 (2021); *Green Party of Ga. v. Kemp*, 171 F. Supp. 3d 1340, 1365 (N.D. Ga. 2016).

RESPONSE: No response.

90. But to be compelling, the State's interest must have both "legitimacy" in the abstract and "presence" in the specific case. *Citizens for*

Police Accountability Pol. Comm. v. Browning, 572 F.3d 1213, 1219 (11th Cir. 2009).

RESPONSE: The state interests shown by State Defendants satisfy this standard. Further, in *Citizens for Police Accountability Political Committee v. Browning*, 572 F.3d 1213, 1219 (11th Cir. 2009), the plaintiffs did not challenge the legitimacy or presence of the State's interests. And the Eleventh Circuit upheld the challenged law against a First Amendment challenge, specifically noting that the State "may take precautions to protect and to facilitate voting" without waiting for actual problems to emerge. *Id.* at 1220. That is precisely what the evidence shows the challenged provisions do here.

91. And "[w]hen the Government defends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must do more than simply posit the existence of the disease sought to be cured." *Turner Broadcasting System v. FCC*, 512 U.S. 622, 664 (1994) (quotation marks omitted). The State must "demonstrate that the recited harms are real, not merely conjectural," and show that the Ballot Application Restrictions "will in fact alleviate these harms in a direct and material way." *Id.*

RESPONSE: The evidence demonstrated that the challenged provisions address real harms including voter confidence and election administration, among others. The Supreme Court's decision in *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 662 (1994), does not require any different result. It

involved the must-carry provisions for local broadcast channels on cable and applied intermediate scrutiny. The government attempted to show that the requirements were necessary to protect the viability of broadcast television—something that is far more difficult to determine than issues like voter confidence and election administration burdens. *Id.* at 664–65. And the Supreme Court has been abundantly clear that "it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 686 (2021). Indeed, the Supreme Court has expressly acknowledged that "[f]raud is a real risk that accompanies mail-in voting[.]" *Id.*

92. "In light of the [] restrictions on political expression and association protected under the First Amendment," courts "cannot cavalierly accept without proof that the means being used achieve the legitimate ends being sought;" the State must "establish a nexus" between the challenged restrictions and the state interests they purport to serve. *Zeller v. Fla. Bar*, 909 F. Supp. 1518, 1525-26 (N.D. Fla. 1995) (citing *Meyer*, 486 U.S. at 426-27). As other courts have recognized, "such a failure to establish a nexus" between the asserted state interests, no matter how legitimate, and the challenged laws "is grounds for finding the restriction unconstitutional." *Id.*

RESPONSE: State Defendants presented abundant proof of both the state interests and the close nexus between those interests and the challenged provisions of SB 202. [Doc. 244, ¶¶ 142–210]. With those facts established, the Provisions are narrowly tailored.

93. Here, the State Defendants have failed to show that their asserted interests are present in this case, nor have they demonstrated that the Ballot Application Restrictions will in fact alleviate those harms. Therefore, because of the lack of a nexus between the state's interests and the means they have chosen to attempt to address those interests, the Ballot Application Restrictions are unconstitutional.

RESPONSE: The evidence at trial demonstrated that strict scrutiny does not apply. But even if it did, State Defendants have shown that the state interests are present and the challenged provisions are narrowly tailored to address the harms. *See* Resps. to Pls.' Proposed FOF ¶¶ 70, 78, 94, 96, 241, 270, 275–79; Resps. to Pls.' Proposed COL ¶¶ 84, 87, 92.

94. The State Defendants argue that the Ballot Application Restrictions are narrowly tailored to achieve the State's interest in minimizing voter confusion related to absentee ballot applications. *See* FOF ¶ 270.

RESPONSE: State Defendants incorporate their response to Plaintiffs' Proposed FOF ¶ 270 and their Proposed Findings [Doc. 244] for their arguments.

95. Although attempts to reduce voter confusion are laudable in the abstract, the Supreme Court has indicated that a State's claim that it is "enhancing the ability of its citizenry to make wise decisions by restricting the flow of information . . . must be viewed with some skepticism." *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 228 (1989). Instead, "it is safer to assume that the people are smart enough to get the information they need than to assume that the government is wise or impartial enough to make the judgment for them." *Riley*, 487 U.S. at 804 (Scalia, J., concurring).

RESPONSE: There is no need speculate or "to assume that the people are smart enough to get the information they need[,]" because the evidence adduced at trial clearly points to the fact that many voters were confused. State Defendants produced evidence indicating that voters were confused about the absentee-ballot applications sent, unsolicited, by individuals and groups like Plaintiffs. 4/16/24 Trial Tr. 180:13–25, 181:22–182:11, 187:7–18, 188:15–189:15, 196:13–197:15, 197:16–198:15, 201:5–16, 205:23–206:21, 217:11–218:17, 221:1–222:10 (Germany).

96. To support their contention that the Ballot Application Restrictions aim to reduce voter confusion, the State relies on several purported voter

complaints submitted to the Secretary of State's office that purport to contain statements from voters expressing confusion about absentee ballot application mailers sent to them by non-government third parties. FOF ¶ 270.

RESPONSE: State Defendants incorporate their response to Plaintiffs' Proposed FOF ¶ 270 and their Proposed Findings [Doc. 244] for their arguments.

97. The Court finds that the number of purported voter complaints about third party absentee ballot application distribution were disproportionately small compared to the scope of the Ballot Application Restrictions. FOF ¶¶ 258, 261. Only a fraction of the complaints highlighted by the State Defendants even concerned absentee ballot applications, and fewer still contained concerns or complaints that specifically had to do with confusion caused by the distribution of absentee ballot applications by third parties. *Id.*

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 258, 261.

98. And far from demonstrating that voter confusion arose from the distribution of absentee ballot applications, several of the purported voter complaints cited by Defendants show a clear understanding of the source and nature of Plaintiffs' absentee ballot application mailers. FOF ¶¶ 257, 262. Of these, many appear to express disagreement or annoyance with

absentee voting, the sending of absentee mail ballot applications, or political mail writ large. FOF ¶¶ 255-262. But the First Amendment does not permit the State to enact speech restrictions merely because of annoyance. *See Martin v. City of Struthers, Ohio*, 319 U.S. 141, 143 (1943).

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 255–62. Additionally, the Supreme Court's decision in *Martin,* 319 U.S. at 143, is inapposite here, because State Defendants demonstrated and produced evidence at trial of actual voter confusion, not just mere annoyance. *See*, *e.g.,* 4/16/24 Trial Tr. 180:13–25, 181:22–182:11, 187:7–18, 188:15–189:15, 196:13–197:15, 197:16–198:15, 201:5–16, 205:23–206:21, 217:11–218:17, 221:1–222:10 (Germany).

99. The parties presented evidence that approximately 195 purported voter complaints received by the Elections Division pertained to absentee ballot applications since 2020. FOF ¶ 258. Almost half of them pertained to voters who requested, but never received, an absentee ballot in 2020. *Id.* Of the 195 purported voter complaints, approximately 18 pertained to distribution of absentee ballot applications by a third party. *Id*. Even fewer pertained specifically to Plaintiffs sending duplicate or prefilled applications; instead, many expressed disagreement with Plaintiffs' message. FOF ¶¶ 258, 262. In any event, the number of purported voter complaints about third party absentee ballot application distribution—and absentee ballot

applications generally—pale in comparison to the "thousands" of purported voter complaints that the Elections Division has received overall since 2020, the majority of which were "meritless," and "general vent[s]." FOF ¶¶ 254-261.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 254–62.

100. By comparison, Ms. Watson testified that the Secretary of State received at least a thousand complaints about the 2020 election being "stolen," and more messages that were just general complaints about election outcomes and opinions about the administration of the election and Georgia election officials. FOF ¶¶ 254-257.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 254–57.

101. Moreover, several current and former employees of the Secretary of State's office testified that the 2020 election cycle was characterized by rampant misinformation related to the electoral system. FOF ¶¶ 248, 267-69.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 248, 267–69.

102. Secretary Raffensperger himself explained to Representative Blackmon that many Georgia citizens were extremely disappointed with the results of the 2020 election, and simply took out their frustrations with those

results on the election process. FOF ¶ 267. Mr. Germany, the Secretary's general counsel, gave similar testimony to the Georgia House of Representatives Special Committee on Election Integrity during a hearing on February 19, 2021. FOF ¶¶ 267-68.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 267–68.

103. Finally, it is undisputed that Plaintiffs changed their programming from 2020 to 2022 and going into 2024. FOF ¶¶ 185-197. Specifically, Plaintiffs have changed their data vendor and reduced the number of waves of mailers that they send to voters. FOF ¶¶ 133, 187-193. In response to Plaintiffs' showing of a revised and streamlined mailing program, Defendants have presented no evidence that voter confusion arose from Plaintiffs' mailers in 2022. *See* FOF ¶¶ 254-266.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 133, 185–97, 254–66. Plaintiffs admitted that there was no evidence of voter confusion when the Provisions Plaintiffs challenge were in place in 2022, showing that the State's interest was strong and that the Provisions had their desired effects.

104. Based on the record before this Court, the State Defendants have not met their burden to demonstrate that voter confusion arising specifically from the distribution of absentee ballot applications by non-governmental

third parties is present in this case, such that it provides a sufficiently compelling government interest to restrict political speech and expression by such parties.

RESPONSE: State Defendants presented abundant evidence of significant state interests in avoiding voter confusion in the distribution of absentee-ballot applications.

105. The second interest advanced by the State Defendants in support of the Ballot Application Restrictions is the prevention of voter fraud and the perception of voter fraud among Georgia voters. FOF ¶ 270.

RESPONSE: State Defendants incorporate their response to Plaintiffs' Proposed FOF ¶ 270.

106. To satisfy restrictions on speech based on concerns about fraud, the State must "satisfy its burden of demonstrating that fraud is real, rather than a conjectural problem." *Buckley*, 525 U.S. at 210 (Thomas, J., concurring). If the State's interest in preventing fraud is not "significantly advanced" by the policy at issue, it cannot survive the exacting scrutiny required under *Meyer* and *Buckley*. *Id*. at 204 n.23.

RESPONSE: The cases Plaintiffs cite are inapposite because, unlike here, they involved direct state regulation of core political speech. *Buckley v. Am. Const. L. Found., Inc.,* 525 U.S. 182, 209–10 (1999). Moreover, as the Supreme Court later clarified, "it should go without saying that a State may

take action to prevent election fraud without waiting for it to occur and be detected within its own borders." *Brnovich*, 594 U.S. at 686. Indeed, the Supreme Court has expressly acknowledged that "[f]raud is a real risk that accompanies mail-in voting[.]" *Id.*

107. Here, the State Defendants were unable to identify any evidence suggesting that pre-filled absentee ballot applications sent by non-governmental third parties resulted in the casting or counting of a fraudulent ballot. FOF ¶¶ 264-66.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 264–66.

108. All parties agree that the results of the 2020 election in Georgia were accurate and reliable, and that there was no evidence of widespread fraud affecting the outcome. FOF ¶¶ 249, 268.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 249, 268. State Defendants reiterate that "it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders." *Brnovich,* 594 U.S. at 686. Indeed, the Supreme Court has expressly acknowledged that "[f]raud is a real risk that accompanies mail-in voting[.]" *Id.* Furthermore, protecting elections from even the appearance of fraud is an important part of election integrity.

109. The Secretary of State's office has identified no substantiated case of voter fraud referred to the Attorney General resulting from a third party distributing multiple absentee ballot applications. FOF ¶¶ 263-66. Nor did the State Defendants point to any evidence that third-party distribution of absentee ballot applications led to any individuals receiving a duplicate ballot or attempting to vote a second time. *Id.*

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 263–66, and reiterate that "it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders." *Brnovich*, 594 U.S. at 686. Indeed, the Supreme Court has expressly acknowledged that "[f]raud is a real risk that accompanies mail-in voting[.]" *Id.* Furthermore, protecting elections from even the appearance of fraud is an important part of election integrity.

110. Nor is there even a serious risk of fraud arising from the distribution or even submission of multiple ballot applications. Mr. Evans testified that a duplicate ballot would only be issued as a result of "egregious human error" by election officials. FOF ¶¶ 84, 266.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 84, 266 and reiterate that "it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders." *Brnovich,* 594 U.S. at 686. Indeed, the

Supreme Court has expressly acknowledged that "[f]raud is a real risk that accompanies mail-in voting[.]" *Id.* Furthermore, protecting elections from even the appearance of fraud is an important part of election integrity.

111. The State has an interest in allaying the public's concerns about fraud in our elections and taking steps to address those concerns. But popular misconceptions about unsubstantiated claims of fraud in Georgia's election system do not suffice to justify restrictions on core political speech.

RESPONSE: Plaintiffs' mailing absentee-ballot applications is not core political speech. *See, e.g.*, *Meyer*, 486 U.S. at 421–22. Moreover, "it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders." *Brnovich,* 594 U.S. at 686. Indeed, the Supreme Court has expressly acknowledged that "[f]raud is a real risk that accompanies mail-in voting[.]" *Id.* And protecting elections from even the appearance of fraud is an important part of election integrity.

112. State Defendants argue that the Ballot Application Restrictions improve orderly election administration, but the record lacks any evidence linking Plaintiffs' mailers or any third-party absentee ballot application distribution to voters' submission of duplicate applications to election officials in recent elections. cf. FOF ¶¶ 254-266.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 254–66.

113. The record does include evidence that duplicative applications could have resulted from many factors, including the fact that many individuals voted by mail for the first time in 2020 during the height of the COVID-19 pandemic. FOF ¶¶ 239-248.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 239–48.

114. The record also includes instances of voters contacting election officials when they had submitted an absentee ballot application but not received an absentee ballot, as well as an official from the Secretary of State's office instructing a voter to send a second application in such an instance. FOF ¶ 243. Additionally, the record demonstrates that, during the 2020 election cycle, some voters never received their requested absentee ballots for the primary, FOF ¶ 258, which likely contributed to the increased frequency with which voters submitted multiple absentee ballot applications in the 2020 general election.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 243, 258.

115. While efficient election administration may be a compelling state interest in the abstract, "the First Amendment does not permit the State

to sacrifice speech for efficiency." *Riley*, 487 U.S. at 795; *accord Buckley*, 525 U.S. at 192 (rejecting administrative convenience rationale).

RESPONSE: The cases Plaintiffs cite are inapposite because they involve core political speech, which is not at issue here. Moreover, the trial record demonstrates that unsolicited mailing of absentee-ballot applications by third parties directly resulted in voter confusion and burdened election administration. 4/18/24 Trial Tr. 38:9–39:10, 83:18–85:1, 85:23–86:8 (Evans). Additionally, the Provisions target those burdens and are not merely aimed at increasing election efficiency, although they also have that benefit.

116. Moreover, even if third-party mailers did result in the submission of duplicative applications in 2020, the procedure for election officials to process duplicate applications is uncomplicated. FOF ¶ 82.

RESPONSE: State Defendants incorporate their response to Plaintiffs' Proposed FOF ¶ 82. Further, the evidence adduced at trial demonstrates that the unsolicited mailing of absentee-ballot applications by third parties like Plaintiffs directly results in voter confusion and burdens election administration, including thousands of hours of additional work for county officials. 4/18/24 Trial Tr. 38:9–39:10, 83:18–85:1, 85:23–86:8 (Evans).

117. In fact, the record demonstrates that applications pre-filled with information from the voter registration rolls can facilitate smooth election administration. FOF ¶¶ 134, 219, 220, 228. Prior to the enactment

of SB 202, the Secretary of State's office actually requested that Plaintiffs pre-fill the date of the election on their applications, and at least one county wanted to do the same following the passage of the Ballot Application Restrictions, but was unable to do so. FOF ¶ 134.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 134, 219, 220, 228. State Defendants further note the evidence at trial demonstrated the unsolicited mailing of absentee-ballot applications by third parties like Plaintiffs directly results in voter confusion and burdens election administration. 4/18/24 Trial Tr. 38:9–39:10, 83:18–85:1, 85:23–86:8 (Evans).

118. Although Defendants have put forward that cancelled ballots increase processing time and lead to long lines at the polls, a voter can either cancel their absentee ballot request in person at the polls by surrendering their ballot to a poll worker, or by submitting a request in writing to cancel their absentee ballot prior to appearing at the polls in person. FOF ¶¶ 79-82, 243.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 79–82, 243.

119. Testimony at trial could not show how many absentee ballot cancellations in 2020 occurred at the polls or sometime before then. FOF ¶ 246. Testimony at trial also clarified that some cancelled ballots are likely

due to lack of receipt of the requested absentee ballot by the voter—which occurred to a significant extent in the June 2020 primary election. FOF ¶ 243.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 243, 246.

120. Even had the State sufficiently identified compelling state interests with a nexus to the Ballot Application Restrictions, the Eleventh Circuit has held that the State must "afford the requisite breathing space to protected speech." *Weaver v. Bonner*, 309 F.3d 1312, 1319 (11th Cir. 2002). As such, the restrictions imposed on Plaintiffs' speech must be "the least restrictive means of achieving" those interests in order to satisfy strict scrutiny. *Otto*, 981 F.3d at 879; *accord United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000).

RESPONSE: Even if strict scrutiny applied here, and it does not, the Provisions satisfy that higher standard because they are narrowly tailored to serve the State's compelling interests.

121. To satisfy the narrow tailoring requirement, "the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *McCullen v. Coakley*, 573 U.S. 464, 495 (2014).

RESPONSE: Even if strict scrutiny applied here, and it does not, the evidence adduced at trial demonstrates that the Provisions are narrowly

tailored to the State's compelling interests because they are necessary to address threats to actual and perceived election integrity, burdens on election officials, and sources of voter confusion and frustration, such as unauthorized use of personal information, incorrect data, and sending duplicate forms after a voter has already applied for an absentee ballot. *See* [Doc. 244, ¶¶ 142–210].

122. And a law fails to survive the narrow tailoring analysis if the law is "seriously underinclusive" or "seriously overinclusive." Order on Motion for Summary Judgment, ECF No. 179 at 27 (citing Brown v. Ent. Merch. Ass'n, 564 U.S. 786, 805 (2011)). "Underinclusiveness raises serious doubts about whether the government is in fact pursuing the interest it invokes." Id. On the other hand, overinclusiveness raises questions about whether the statute "encompasses more protected conduct than necessary to achieve [the government's] goal." *Id.* (citing *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 578 (1993)).

RESPONSE: The Prefilling Prohibition is not overinclusive. "[N]arrowly tailored," the Eleventh Circuit confirms, does not mean "perfectly tailored." *McClendon v. Long,* 22 F.4th 1330, 1338 (11th Cir. 2022). And even if it did, it is hard to imagine how the Prefilling Prohibition could be tailored more narrowly or perfectly than it is. Further, the First Amendment imposes no freestanding "'underinclusiveness' limitation" but a "content discrimination" limitation upon a State's prohibition of proscribable speech.

R.A.V. v. City of St. Paul, 505 U.S. 377, 387 (1992). The Supreme Court has "upheld laws—even under strict scrutiny—that conceivably could have restricted even greater amounts of speech in service of their stated interests." *Williams-Yulee v. Fla. Bar,* 575 U.S. 433, 449 (2015) (citations omitted). If a category of conduct or speech is "proscribable," then the state is free to proscribe a narrower subset of that conduct or speech if it has a rational basis for doing so. *R.A.V.,* 505 U.S. at 419 (Stevens, J., concurring); [Doc. 244, ¶ 234].

123. Prior to the enactment of the Ballot Application Restrictions, Plaintiffs prefilled their Absentee Ballot Applications using voter information from the State's voter file—which the voter information provided on submitted applications must match in order to be accepted. FOF ¶¶ 29, 34, 49, 130-32, 219. And as Mr. Waters testified, prefilling an application reduces the error rate of mailers and ensures that the information contained therein is legible to election officials. FOF ¶ 220.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 29, 34, 49, 130–32, 219–20.

124. But the challenged Prefilling Prohibition here is a complete prohibition of prefilling any information on the application—including accurate information derived from the state's voter file, which is required to successfully apply for an absentee ballot. This is overinclusive, sweeping in far

more expressive conduct than is necessary to address any issues arising from errors or mistakes in pre-filled applications.

RESPONSE: The Prefilling Prohibition is not overinclusive. "[N]arrowly tailored," the Eleventh Circuit confirms, does not mean "perfectly tailored." *McClendon*, 22 F.4th at 1338. And even if it did, it is hard to imagine how the Prefilling Prohibition could be tailored more narrowly or perfectly than it is. [Doc. 244, ¶ 234].

125. Both the Prefilling Prohibition and Mailing List Restriction are underinclusive. Neither address voter confusion arising from the receipt of multiple absentee ballot application mailers since they do not prevent voters from receiving multiple absentee ballot applications in the mail—whether from the same organization or different ones—prior to applying for an absentee ballot. FOF ¶¶ 275-279.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 275–79. Further, the First Amendment imposes no freestanding "'underinclusiveness' limitation" but a "content discrimination" limitation upon a State's prohibition of proscribable speech. *R.A.V.,* 505 U.S. at 387. The Supreme Court has "upheld laws—even under strict scrutiny—that conceivably could have restricted even greater amounts of speech in service of their stated interests." *Williams-Yulee,* 575 U.S. at 449 (citations omitted). If a category of conduct or speech is "proscribable," then the State is

free to proscribe a narrower subset of that conduct or speech if it has a rational basis for doing so. *R.A.V.,* 505 U.S. at 419 (Stevens, J., concurring).

126. In fact, for voters who never decide to apply for an absentee ballot (including those who never considered doing so), the Mailing List Restriction has absolutely no effect on them—those voters may still receive a potentially unlimited number of absentee ballot applications. FOF ¶ 276.

RESPONSE: State Defendants incorporate their response to Plaintiffs' Proposed FOF ¶ 276.

127. Even someone who applies at the beginning of the application period could still receive duplicative applications from multiple different senders during the first five days of the application period or during the five-day grace period. FOF ¶ 275.

RESPONSE: State Defendants incorporate their response to Plaintiffs' Proposed FOF ¶ 275.

128. And to the extent that some voters were indeed confused about the source or nature of absentee ballot applications received in the mail from non- government third parties, neither prohibiting pre-filling of a voter's name and address on an absentee ballot application using the State's own voter registration information nor limiting to whom or when third parties can send absentee ballot applications to registered voters meaningfully addresses that confusion. FOF ¶ 259, 279.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 259, 279.

129. And as explained above, there is no meaningful nexus between the Ballot Application Restrictions and whether voters can submit duplicate applications or the process by which election officials process such applications. Nor do the Ballot Application Restrictions meaningfully address the prevention of voter fraud, which Georgia's election laws already successfully deterred prior to the enactment of these provisions.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 87, 92. Further, the trial record demonstrates that the Provisions meaningfully address issues in Georgia election administration. [Doc. 244, ¶¶ 142–210].

130. Less restrictive means exist—and one such solution was, in fact, formerly a subject of this very litigation. FOF ¶¶ 4, 10, 96, 274. To address voter confusion about the source and nature of absentee ballot application mailers, the State now requires that non-governmental third parties include a disclaimer on the application itself indicating who is sending the application, and that it is not a ballot. *Id.* Although Plaintiffs challenged the Disclaimer Provision as initially drafted, after the Legislature revised the text of the required disclaimer so that it was no longer misleading or

inaccurate, Plaintiffs dismissed their claims with respect to that requirement. *Id.*

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 4, 10, 96, 274. Further, even if strict scrutiny applied, the challenged provisions are not overinclusive. "[N]arrowly tailored," the Eleventh Circuit confirms, does not mean "perfectly tailored." *McClendon,* 22 F.4th at 1338. And even if it did, it is hard to imagine how they could be tailored more narrowly or perfectly than they are. Further, Plaintiffs abandoned their challenge to the Disclaimer Provision, and reasoning and arguments about that provision are not in evidence, and are not relevant to the Court's consideration of the remaining challenged provisions. [Doc. 176; Doc. 179 at 2 n.4].

131. In recent years, other less restrictive alternatives aimed at streamlining the distribution of absentee ballot applications have also been developed and implemented in Georgia. In 2019, the Secretary's office began requiring third parties to use absentee ballot application forms that were "substantially similar" to the state's application form, in an effort to reduce confusion on the part of voters and election workers receiving and processing absentee ballot applications. FOF ¶ 94. Later, SB 202 introduced a requirement that third parties only distribute the form designed and

published by the Secretary of State, further effectuating these goals. FOF ¶ 95.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 94–95. Further, even if strict scrutiny applied, the challenged provisions are not overinclusive. "[N]arrowly tailored," the Eleventh Circuit confirms, does not mean "perfectly tailored." *McClendon,* 22 F.4th at 1338.

132. There are still other less restrictive approaches that the State could have taken to address any legitimate concerns about voter confusion or orderly election administration that are not sufficiently addressed by the above listed measures, such as requiring that prefilled applications utilize only the state voter registration file, or adding a scienter requirement for violations of the Mailing List Restriction to prevent punishing good faith efforts to comply with the law.

RESPONSE: Even if strict scrutiny applied, the challenged provisions are not overinclusive. "[N]arrowly tailored," the Eleventh Circuit confirms, does not mean "perfectly tailored." *McClendon,* 22 F.4th at 1338.

133. Ultimately, the State's justifications for the Ballot Application Restrictions are, at best, based on the unique circumstances that arose during the 2020 election, a hotly contested presidential race conducted amidst a global pandemic that led many across the nation—including

Plaintiffs, State Defendants, and an unprecedented number of Georgia voters—to look to mail voting as the safest and most effective way to participate in the democratic process, and mailed communications as the safest way to encourage such participation. FOF ¶¶ 239-250. Many of the issues the State identifies as justifications for these restrictions on core political speech are unlikely to arise again in subsequent elections and are inapplicable to how Plaintiffs now communicate their pro-absentee voting message. FOF ¶¶ 140, 191-92, 240-41, 250, 298. In particular, Plaintiffs' volume of mailings in 2022 was much closer to their 2018 volume than 2020 volume, which would be true even if Plaintiffs were able to send a second wave of application mailers to Georgia voters. FOF ¶¶ 186, 195, 197, 250.

RESPONSE: State Defendants incorporate their responses to Plaintiffs' Proposed FOF ¶¶ 140, 186, 191–92, 195, 197, 239–50, 298.

134. Here, because the Ballot Application Restrictions are both over- and underinclusive, and because other, less restrictive means exist to address the State's interests, they are not narrowly tailored. Therefore, the Ballot Application Restrictions are unconstitutional.

RESPONSE: The Provisions are not overinclusive. "[N]arrowly tailored," the Eleventh Circuit confirms, does not mean "perfectly tailored." *McClendon,* 22 F.4th at 1338. And even if it did, it is hard to imagine how they could be tailored more narrowly or perfectly than they are. Further, the First

Amendment imposes no freestanding "'underinclusiveness' limitation" but a "content discrimination" limitation upon a State's prohibition of proscribable speech. *R.A.V.,* 505 U.S. at 387. The Supreme Court has "upheld laws—even under strict scrutiny—that conceivably could have restricted even greater amounts of speech in service of their stated interests." *Williams-Yulee,* 575 U.S. at 449 (citations omitted). If a category of conduct or speech is "proscribable," then the state is free to proscribe a narrower subset of that conduct or speech if it has a rational basis for doing so. *R.A.V.,* 505 U.S. at 419 (Stevens, J., concurring).

135. Plaintiffs have demonstrated by a preponderance of the evidence that Plaintiffs' absentee ballot application mailers are speech and expressive conduct and that Georgia SB 202's Ballot Application Restrictions restrict Plaintiffs' speech and expressive conduct.

RESPONSE: The trial record does not support this conclusion, as Plaintiffs conceded throughout trial that any message communicated is found in other unaffected parts of their mailers. *See* Resps. to Pls.' Proposed FOF ¶¶ 119, 233.

136. Defendants have not met their burden to show that the Ballot Application Restrictions are narrowly tailored to serve a compelling governmental interest.

RESPONSE: The trial record does not support this conclusion, as State Defendants demonstrated that the Provisions are narrowly tailored to address demonstrated concerns about election efficiency, perceptions of voter fraud, and voter confusion.

137. Therefore, the Court finds that the Ballot Application Restrictions violate the First and Fourteenth Amendments to the United States Constitution and cannot be enforced.

RESPONSE: The trial record does not support this conclusion, as the challenged Provisions do not impact Plaintiffs' expressive conduct. Moreover, if there were any message communicated through the mailing of applications themselves, the Provisions nonetheless survive any level of scrutiny because they are narrowly tailored to further the State's compelling interests.

138. It is **ORDERED** that the State Defendants are enjoined from further enforcing the Prefilling Prohibition, O.C.G.A. § 21-2-381(a)(1)(C)(ii), and Mailing List Restriction, O.C.G.A. § 21-2-381(a)(3)(A)-(B).

RESPONSE: The trial record does not support such an order.

139. It is **ORDERED** that Plaintiffs are prevailing parties entitled to attorneys' fees, expenses, and costs pursuant to 42 U.S.C. § 1988 and 2 U.S.C. § 1031(e).

RESPONSE: The trial record does not support such an order

June 14, 2024

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CERTIFICATE OF COMPLIANCE

Under L.R. 7.1(D), the undersigned hereby certifies that the foregoing has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(C).

/s/ Gene C. Schaerr
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