

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

VOTEAMERICA, et al.,

Plaintiffs,

v.

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

Defendants.

CIVIL ACTION NO.  
1:21-CV-01390-JPB

**ORDER FOR ADDITIONAL BRIEFING**

This matter was recently before the Court for a bench trial on Plaintiffs'<sup>1</sup> claim that two provisions of Georgia Senate Bill 202 ("S.B. 202") violate the First Amendment.

On April 7, 2021, Plaintiffs filed this action against Defendants,<sup>2</sup> challenging two provisions of S.B. 202. One of the provisions at issue is the

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<sup>1</sup> Plaintiffs are Voter Participation Center and Center for Voter Information. VoteAmerica was originally a named plaintiff but was dismissed by stipulation of the parties on September 26, 2022. [Doc. 142].

<sup>2</sup> Defendants are Brad Raffensperger, in his official capacity as Secretary of State of the State of Georgia, and individual members of the State Election Board, in their official capacities.

Prefilling Provision, which provides that “[n]o person or entity . . . 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). 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. Id. O.C.G.A. § 21-2-381(a)(1)(C)(i). Failure to comply with the Prefilling Prohibition could result in misdemeanor charges. O.C.G.A. § 21-2-598 (“[A]ny person who violates any provision of this chapter shall be guilty of a misdemeanor.”). “The trial record lacks [any other reference] to the consequences of failure to comply” with the Prefilling Provision. [Doc. 248, p. 4].

Article III of the Constitution limits the subject matter jurisdiction of federal courts to “Cases” and “Controversies.” U.S. Const. art. III, § 2. To satisfy this case and controversy requirement, litigants must have standing. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992). Standing is a threshold question in every case. CAMP Legal Def. Fund, Inc. v. City of Atlanta, 451 F.3d 1257, 1269 (11th Cir. 2006). The standing doctrine requires a plaintiff to show that he: (1) suffered an injury-in-fact (2) that is fairly traceable to the challenged conduct of the defendant and (3) that is likely to be redressed by a favorable judicial decision. Lujan, 504

U.S. at 560–61. “These three elements ‘are not mere pleading requirements but rather an indispensable part of the plaintiff’s case.’” Ga. Ass’n of Latino Elected Offs., Inc. v. Gwinnett Cnty. Bd. of Registration & Elections, 36 F.4th 1100, 1113 (11th Cir. 2022) (quoting Lujan, 504 U.S. at 561). Importantly, each element of standing must be supported with “the manner and degree of evidence required at the successive stages of litigation.” Jacobson v. Fla. Sec’y of State, 974 F.3d 1236, 1245 (11th Cir. 2020). “If an action proceeds to trial, the facts necessary to establish standing ‘must be supported adequately by the evidence adduced at trial.’” Id. (quoting Lujan, 504 U.S. at 561).

The Court recognizes that Plaintiffs’ standing to bring suit was not challenged at trial and that neither party meaningfully addressed standing in any of the post-trial briefing. However, “a federal court is obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking.” Greater Birmingham Ministries v. Sec’y of State for State of Ala., 992 F.3d 1299, 1316 (11th Cir. 2021). Here, the Court is concerned with whether Plaintiffs have met their burden to show traceability and redressability as to the Prefilling Provision.

“When traceability and redressability are at stake, the key questions are who caused the injury and how it can be remedied.” City of S. Miami v. Governor, 65 F.4th 631, 640 (11th Cir. 2023). For traceability, the Eleventh Circuit Court of

Appeals has held that “[t]he injury must be ‘fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.’” Ga. Ass’n of Latino Elected Offs., 36 F.4th at 1115–16 (quoting Lujan, 504 U.S. at 560–61). Stated another way, traceability requires that the injury must have been caused by the defendant’s actions. Finn v. Cobb Cnty. Bd. of Elections & Registration, 682 F. Supp. 3d 1331, 1339 (N.D. Ga. 2023). Redressability is a closely related concept. To show redressability, “it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision’” of the court. Lujan, 504 U.S. at 561 (quoting Simon v. E. Ky. Welfare Rts. Org., 426 U.S. 26, 38 (1976)).

In this case, Plaintiffs seek an order from this Court enjoining the enforcement of the Prefilling Provision. It is not clear from the record, however, who enforces the Prefilling Provision since it is punishable by a misdemeanor.<sup>3</sup> Notably, under Eleventh Circuit law, “federal courts have no authority to erase a duly enacted law from the statute books.” Jacobson, 974 F.3d at 1255. Moreover, courts cannot bind those “who are not parties” to this action. Id. at 1254. Indeed, nonparties remain lawfully entitled to act in accordance with the law “unless and

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<sup>3</sup> The Anti-Duplication Provision, which is the other provision at issue in this case, is different. The Anti-Duplication Provision clearly provides that violations are punishable by the State Election Board. O.C.G.A. § 21-2-381(a)(3)(B).

until they are made parties to a judicial proceeding that determines otherwise.” Id.  
To summarize, courts may only “enjoin executive officials from taking steps to enforce a statute” when those “officials who enforce the challenged statute are properly made parties to a suit.” Id.

Plaintiffs shall file a brief addressing standing no later than ten days from the date of this order. Defendants shall file their response brief no later than seven days after the filing of Plaintiffs’ brief. Plaintiffs shall thereafter have five days to file a reply.

**SO ORDERED** this 19th day of July, 2024.



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**J. P. BOULEE**  
United States District Judge