

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

VOTER PARTICIPATION CENTER  
and CENTER FOR VOTER  
INFORMATION,

Plaintiffs,

Case No. 1:21-cv-01390-JPB

v.

Judge J.P. Boulee

BRAD RAFFENSPERGER, in his  
official capacity as Secretary of State  
of the State of Georgia; SARA  
GHAZAL, JANICE JOHNSTON,  
EDWARD LINDSEY, and  
MATTHEW MASHBURN, in their  
official capacities as members of the  
STATE ELECTION BOARD,  
Defendants,

and

REPUBLICAN NATIONAL  
COMMITTEE; NATIONAL  
REPUBLICAN SENATORIAL  
COMMITTEE; NATIONAL  
REPUBLICAN CONGRESSIONAL  
COMMITTEE; and GEORGIA  
REPUBLICAN PARTY, INC.,  
Intervenor Defendants.

**SUPPLEMENTAL BRIEFING  
REGARDING STANDING**

**Introduction**

In its Order dated July 19, 2024 (“Order”), this Court requested additional briefing addressing whether Plaintiffs “have met their burden to show traceability and redressability” sufficient to support their challenge to O.C.G.A. § 21-2-

381(a)(1)(C)(ii) (the “Prefilling Prohibition”). ECF No. 252 at 3. As the Court noted in that Order, Defendants did not challenge Plaintiffs’ standing at trial. *Id.* at 4. And although Defendants did contest Plaintiffs’ standing at the motion to dismiss stage of this litigation, ECF Nos. 40-1, 51, they did not assert then—nor at any point over the three years since this case was filed—that Plaintiffs’ alleged injuries were not traceable to State Defendants or redressable by judicial relief from this Court.

The reason for that is simple—both Georgia law and the record developed in this case clearly demonstrate that the Secretary of State (“SOS” or the “Secretary”) and State Election Board (“SEB” or the “Board”) (together, the “State Defendants”) have direct statutory authority and responsibility to enforce Georgia’s election laws—including the Prefilling Prohibition, and Plaintiffs’ prayer for relief requested that the Court “enjoin [State] Defendants from enforcing the challenged provisions in Section 25 of SB 202 . . . including the punitive sanctions.” ECF No. 1 at 58. Thus, Plaintiffs’ First Amendment injury arising from the Prefilling Prohibition is directly traceable to State Defendants’ enforcement of that provision and is likewise redressable by an order from this Court enjoining State Defendants from doing so. Plaintiffs have therefore met their burden to demonstrate Article III standing.

### **LEGAL STANDARD**

To establish standing, a plaintiff must demonstrate that they have (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 v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). Plaintiffs have established each of these elements but focus here on the second and third elements pursuant to the Court’s Order. ECF No. 252 at 3.

## I. TRACEABILITY

“To establish traceability . . . in a lawsuit seeking to enjoin a government official from enforcing the law, a plaintiff must show ‘that the official has the authority to enforce the particular provision [being] challenged, such that [the] injunction prohibiting enforcement would be effectual.’” *Dream Defs. v. Governor of the State of Fla.*, 57 F.4th 879, 888-89 (11th Cir. 2023); accord *American Civil Liberties Union v. The Florida Bar*, 999 F.2d 1486, 1490-1491 (11th Cir. 1993).

Traceability can be established even where a government official has “‘limited’ enforcement authority” as to the challenged law. *303 Creative LLC v. Elenis*, 6 F.4th 1160, 1175 (10th Cir. 2021), *rev’d on other grounds*, 600 U.S. 570 (2023). All that standing requires is that a state defendant have “some connection with [the] enforcement of the provision at issue.” *Socialist Workers Party v. Leahy*, 145 F.3d 1240, 1248 (11th Cir. 1998) (emphasis added). Additionally, “even harms that flow indirectly from the action in question can be said to be ‘fairly traceable’ to that action for standing purposes.” *Focus on the Family v. Pinellas Suncoast Transit Authority*, 344 F.3d 1263, 1273 (11th Cir. 2003) (citation omitted).

## II. REDRESSABILITY

As this Court noted in its recent Order, redressability and traceability are “closely related concept[s].” ECF No. 252 at 4. To establish 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. For standing purposes, Plaintiffs need only demonstrate “a substantial likelihood of redressability.” *Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1126-27 (11th Cir. 2019) (quotation mark omitted).

To establish redressability, a plaintiff need not sue every person or entity who plays some role in enforcing the law that the plaintiff is challenging. “[A] plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his *every* injury.” *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982) (emphasis in original). The likelihood that a plaintiff would obtain partial relief if they were to prevail in their action is sufficient to show redressability. *Made in the USA Found. v. United States*, 242 F.3d 1300, 1310-11 (11th Cir. 2001); *see also Wilding*, 941 F.3d at 1126-27.

## ARGUMENT

Both Georgia law and the record in this case demonstrate that Plaintiffs have established traceability and redressability with respect to the State Defendants and

the Prefilling Prohibition. Georgia’s Secretary of State and State Election Board are fundamental to the enforcement of Georgia’s election laws, such that Plaintiffs’ injuries arising from Georgia’s election laws, including the Prefilling Prohibition, O.C.G.A. § 21-2-381(a)(1)(C)(ii), are directly traceable to such enforcement and are redressable by an Order from this Court enjoining them from doing so.

There are four government bodies that play a role in the enforcement of Georgia’s election laws: (1) the Secretary of State, O.C.G.A. § 21-2-50(b), Trial Tr. 4.16PM 234:5-8 (Germany), Stipulated Facts ¶ 3; (2) the State Election Board, O.C.G.A. § 21-2-31; (3) the Attorney General of Georgia (the “AG”), O.C.G.A. § 45-15-10; and (4) the district attorneys in Georgia’s 159 counties, O.C.G.A. § 45-15-10. While these enforcement bodies often work together, the primary responsibility for initiating investigation and enforcement actions for potential violations of Georgia election law lies with the Secretary of State and the State Election Board.<sup>1</sup> In fact, Georgia law specifies that the Board has the duty “[t]o investigate, or authorize the Secretary of State to investigate, when necessary or advisable the administration of primary and election laws and frauds and irregularities in primaries and elections and to report violations of the primary and

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<sup>1</sup> The Georgia Assembly has recognized the Secretary and Board’s central roles in enforcing the state’s election laws—the Election Law Subcommittee claimed “[t]he Secretary of State and the State Election Board failed to enforce the law as written in the Georgia Code” in 2020. Pls. Ex. 64 at 12.

election laws either to the Attorney General or the appropriate district attorney who shall be responsible for further investigation and prosecution.” O.C.G.A. § 21-2-31(5). This enforcement scheme applies to both Georgia election law generally and specifically to SB 202, including the Prefilling Prohibition. *See* Trial Tr. 4.17AM 63:2-6 (Watson) (election crimes related to third-party absentee ballot application distribution lead to investigations by the SOS); Trial Tr. 4.16PM 187:19-188:14 (Germany) (describing an investigation pre-SB 202 by the SOS into a prefilled absentee ballot application that then led to a “criminal investigation”); Trial Tr. 4.18AM 28:7-14 (Evans) (describing the process he anticipates the Investigations Division would take when investigating the Mailing List Restriction).<sup>2</sup>

The Secretary’s Office is integral to determining whether there has been a violation of Georgia’s election law and is often the first of these entities to become aware of potential violations. Reports of alleged violations of Georgia’s election law usually originate from members of the public or county election officials who alert the Secretary via written complaints or calls to the Secretary’s election fraud hotline. *See* Trial Tr. 4.16PM 170:1-24 (Germany); Trial Tr. 4.16PM 171:4-22 (Germany); Trial Tr. 4.16PM 218:10-16 (Germany) (describing complaints received about prefilled absentee ballot applications); Trial Tr. 4.17AM 14:9-16 (Watson). The

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<sup>2</sup> Or as otherwise referenced in the Court’s most recent Order, the “Anti-Duplication Provision.” ECF No. 252 at 4 n.3.

Secretary's Investigations Division examines allegations of election irregularities, fraud, and other potential violations of Georgia election law, and conducts additional investigation as needed. Trial Tr. 4.16PM 165:18-20, 166:17-22, 233:12-14 (Germany); Trial Tr. 4.17AM 15:16-20 (Watson).

The Investigations Division has approximately twenty sworn investigators and twelve civilian inspectors. Trial Tr. 4.17AM 12:16-25 (Watson). The Investigations Division analyzes each complaint and decides whether an investigation is warranted, and if so, a case is opened and assigned to an investigator. Trial Tr. 4.17AM 15:16-20, 34:13-22 (Watson); *see* Pls. Ex. 144. Some complaints do not merit an investigation and just require a follow-up phone call or email by the Investigations Division, while other complaints do not receive any follow-up or response at all. Trial Tr. 4.17AM 16:1-5, 34:13-22, 66:5-16 (Watson). Formal investigations by the Investigations Division can be classified as substantiated or unsubstantiated. Trial Tr. 4.17AM 37:5-11 (Watson); *see* Pls. Ex. 127. All investigations, regardless of whether they are substantiated, are presented to the SEB by the Investigations Division. Trial Tr. 4.16PM 170:12-19 (Germany); Trial Tr. 4.17AM 16:9-11, 37:5-11 (Watson); *see also, e.g.*, Pls. Exs. 122, 123, 124, 125, 261.

The Secretary's power to investigate potential violations of election law includes those related to absentee ballot applications. *See* Pls. Ex. 144; Trial Tr. 4.17AM 63:2-6 (Watson); O.C.G.A. §§ 21-2-380 to 21-2-390 (Article 10, entitled

“Absentee Voting”). For example, during the 2020 election cycle, amidst thousands of complaints, the Secretary received 195 complaints alleging potential violations of Georgia law related to absentee ballot applications and conducted investigations into some of those complaints. Trial Tr. 4.17AM 67:22-25 (Watson); *see* Pls. Exs. 122, 123, 347. Thus, the Investigations Division is responsible for investigating potential violations of SB 202, including violations of the Mailing List Restriction and Prefilling Prohibition. *See* Trial Tr. 4.17AM 48:6-8 (Watson); Trial Tr. 4.16PM 187:19-188:14 (Germany); *see also New Georgia Project v. Raffensperger*, 484 F. Supp. 3d 1265, 1284 (N.D. Ga. 2020) (rejecting defendants’ argument that “Plaintiffs have not adequately alleged traceability and redressability because they failed to sue all one hundred and fifty-nine (159) counties in Georgia” and finding that Plaintiffs claims were redressable by an order binding the SOS and SEB).

The State Election Board is also charged with enforcement of Georgia election law and is specifically responsible for determining whether a likely violation has occurred and what penalties or further law enforcement steps are necessary. Trial Tr. 4.17AM 16:9-13 (Watson). The Board “is vested with the power to issue orders . . . directing compliance with this chapter or prohibiting the actual or threatened commission of any conduct constituting a violation.” O.C.G.A. § 21-2-33.1. This includes enforcing compliance with, among other provisions, the Mailing List



Restriction, O.C.G.A. § 21-2-381(a)(3)(B), and Prefilling Prohibition, O.C.G.A. § 21-2-381(a)(1)(C)(ii), of SB 202.

When deciding whether there has been a violation of Georgia election law, the Board begins by reviewing the findings from the Secretary's Investigations Division. If the investigation is unsubstantiated or if there has been no violation, the case is dismissed. Trial Tr. 4.17AM 16:9-13 (Watson); *see also id.* at 37:16-18 (Watson). If the Board finds there has been a violation of Georgia's election law, it can issue a letter of instruction explaining how to comply with the law, order a cease and desist, issue a civil fine, or, finally, it can refer the case to the Attorney General or a district attorney for further investigation and prosecution. Trial Tr. 4.16PM 170:16-19 (Germany); Trial Tr. 4.17AM 16:11-18 (Watson); O.C.G.A. §§ 21-2-31(5), 21-2-33.1.

Although the Attorney General and district attorneys may have independent authority to bring criminal charges for alleged violations of the Prefilling Prohibition, in practice, criminal prosecutions of violations of Georgia election law often originate with a referral from the State Election Board. O.C.G.A. § 21-2-31(5); *see* Trial Tr. 4.16PM 170:16-19 (Germany); Trial Tr. 4.17AM 16:11-18 (Watson); Pls. Exs. 140, 142, 143; *see also, e.g.*, Press Release, Georgia Secretary of State Brad Raffensperger, State Election Board Refers Voter Fraud Cases for Prosecution (Sept. 11, 2020), <https://sos.ga.gov/news/state-election-board-refers-voter-fraud-cases->

prosecution-0; Press Release, Georgia Secretary of State Brad Raffensperger, State Election Board Refers Fulton Absentee Mishandling Case to Georgia Attorney General (Aug. 28, 2020), <https://sos.ga.gov/news/state-election-board-refers-fulton-absentee-mishandling-case-georgia-attorney-general>. For example, in February 2021, the Board referred “dozens” of cases to the Attorney General or local district attorneys. Pls. Ex. 143. Notably, however, even if the Board concludes that a violation has occurred, it does not necessarily refer every case to the Attorney General. Trial Tr. 4.17AM 37:12-15 (Watson).

Even civil enforcement of Georgia election law by the Attorney General, including the Prefilling Prohibition, is done at the request of the State Election Board. O.C.G.A. § 21-2-33.1(c) directs that “[t]he Attorney General of this state shall, *upon complaint by the State Election Board*, bring an action in the superior court *in the name of the State Election Board* for a temporary restraining order or other injunctive relief or for civil penalties assessed against any violator of any provision of this chapter or any rule or regulation duly issued by the State Election Board.” (emphases added)

Regardless, because the Secretary and the Board have statutory authority to compel enforcement both civilly and criminally for violations of the Prefilling Prohibition, O.C.G.A. § 21-2-33.1(c) and O.C.G.A. § 21-2-31(5), they are proper defendants for purposes of redressability—even if other officials may have some

role in enforcing violations. *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1255 (11th Cir. 2020) (when executive officials have the power to enforce a statute, the court can “enjoin [those] executive officials from taking steps to enforce [it]”); accord *New Georgia Project*, 484 F. Supp. 3d at 1286 n.16. Indeed, Plaintiffs’ harm arises directly from the actions of State Defendants who have direct control over enforcement of the Prefilling Prohibition. See *League of Women Voters of Fla., Inc. v. Lee*, 566 F. Supp. 3d 1238, 1255 (N.D. Fla. 2021).

Where several government officials share concurrent authority to enforce a challenged law, a plaintiff need not sue *all* of those officials to satisfy redressability. See *Made in the USA Found.*, 242 F.3d at 1310-11. Therefore, even if the Attorney General and/or district attorneys have some authority to prosecute alleged violations of the Prefilling Prohibition, that does not limit this Court’s ability to redress Plaintiffs’ claims and provide Plaintiffs’ their requested relief by enjoining the Secretary and Board from taking action to enforce the provision.

This Court’s opinion in *Sixth District of African Methodist Episcopal Church v. Kemp*, 574 F. Supp. 3d 1260 (N.D. Ga. 2021) (Boulee, J.), is instructive. There, several organizations filed suit against the boards of election and registration for eleven of Georgia’s 159 counties in a challenge to SB 202. *Id.* at 1268. This Court denied the eleven defendant counties’ motion to dismiss, reasoning that the counties had not cited “any authority that supports their argument that Plaintiffs cannot

establish redressability without bringing suit against *all* Georgia counties.” *Id.* at 1272 (emphasis added); *see also New Georgia Project*, 484 F. Supp. 3d at 1286. Similarly, in *Coalition for Good Governance v. Kemp*, 558 F. Supp. 3d 1370, 1382 (N.D. Ga. 2021) (Boulee, J.), this Court found that “the traceability and redressability requirements are satisfied,” where “[t]he governor of Georgia is a defendant here, and the injuries alleged are directly traceable to SB 202, for which he has enforcement authority.” Just as in *Coalition for Good Governance*, State Defendants here have enforcement authority regarding the Prefilling Prohibition, and the traceability and redressability requirements are therefore satisfied.

### CONCLUSION

Because Georgia law clearly grants the Secretary and the Board the authority and responsibility to enforce the challenged provisions, Plaintiffs’ injuries are traceable to State Defendants and redressable by an order enjoining them from enforcing the Challenged Provisions. Plaintiffs have therefore demonstrated standing to bring this action for the relief sought.

Respectfully submitted this 29th day of July, 2024.

/s/ Alice Huling

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**CERTIFICATE OF SERVICE  
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I hereby certify that I have this date electronically filed the within and foregoing, which has been prepared using 14-point Times New Roman font, with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

Dated: July 29, 2024

*/s/ Alice Huling*  
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