

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

IN RE GEORGIA SENATE BILL 202

Master Case No.:
1:21-MI-55555-JPB

**STATE DEFENDANTS' RESPONSE IN OPPOSITION
TO AME PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION [DOC. 546]**

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INTRODUCTION

More than two years after filing their Complaint, AME Plaintiffs seek to enjoin two critical provisions of Georgia’s election-integrity law known as SB 202, claiming that they violate Title II of the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act. The first challenged provision penalizes the prohibited practice called ballot harvesting, which is when another person, including campaign and political operatives, gather absentee ballots from voters and (supposedly) return them to election officials.¹ Georgia law allows certain authorized people (including family, people who reside together, and caregivers of voters with disabilities) to return ballots, but makes ballot harvesting by unauthorized individuals a felony (instead of a misdemeanor) for a person who knowingly “[a]ccepts an absentee ballot from an elector for delivery or return to the board of registrars except as authorized by subsection (a) of Code Section 21-2-385.” O.C.G.A. § 21-2-568(a)(5) (the Ballot-Harvesting Penalty). The second permits voters—for the first time by statute—to use absentee ballot drop boxes to return completed absentee

¹ Political operatives in North Carolina recently plead guilty to violations of North Carolina’s ballot harvesting law in a crime that led to an overturned Congressional election in 2018. See Ex. 5 to Dep. of Dr. Lorraine Minnite, Gabriella Borter, *North Carolina Republican Operative Charged in Election Fraud Scheme*, Reuters (Feb. 27, 2019, 11:28 AM) (Exhibit G).

ballots, subject to reasonable limitations as determined by the General Assembly. O.C.G.A. § 21-2-382(c) (the Drop Box Provisions). [Doc. 546-1 at 1, 10].

The motion should be denied. Not only do the challenged provisions further the State's compelling interests in ballot security and the integrity of the voting process by protecting against ballot harvesting, but they do so without harming voters with disabilities. They serve these interests by broadly defining who may handle a voter's completed absentee ballot and how those ballots may be returned to be counted. And they work in tandem with other (unchallenged) provisions of Georgia law that predate SB 202. For example, O.C.G.A. § 21-2-568(a)(5) raises the penalty of O.C.G.A. § 21-2-385(a) for ballot harvesting from a misdemeanor to a felony. This, in turn, protects voters with disabilities and voters without disabilities from efforts at ballot harvesting prohibited by Georgia law. Plaintiffs ignore these interests.

They also ignore the fact that SB 202 is the only Georgia law that allows drop boxes at all. The Drop Box Provisions require, in part, authorized absentee ballot drop boxes be placed inside voting locations and accessible during early voting hours. The Provisions were, in part, a response to allegations of improper ballot harvesting that led to multiple investigations and burdensome open records requests to counties, reports of vigilantes

stationed at drop boxes and following election workers who were transporting ballots when drop boxes were temporarily authorized, by emergency authority, for the 2020 election cycle elections. Decl. of C. Ryan Germany ¶¶ 10-18 (June 29, 2023) (“Germany Decl.”) (Exhibit A); Dep. Tr. of T. Matthew Mashburn 73:18-78, 81:16-83 (Mar. 7, 2023) (“Mashburn 3/7/23 Dep.”) (Exhibit B); Dep. Tr. of T. Matthew Mashburn 72:10-83:15, 173:3-178:1 (Mar. 14, 2023) (“Mashburn 3/14/23 Dep.”) (Exhibit C).² The location and hours requirements, along with monitoring provisions, further the State’s interest in the security and integrity of the vote-by-mail ballot. Neither provision unduly burdens the ability of voters with disabilities to participate in the absentee vote-by-mail program and voters with disabilities remain free to vote in other ways.

Plaintiffs thus fail to establish that these two challenged provisions violate Title II of the ADA or Section 504 of the Rehabilitation Act. Likewise, they fail to establish irreparable harm from either provision, provisions from which they have not sought extraordinary relief for over two years despite the fact that Georgia has conducted multiple elections in that time. Accordingly, Plaintiffs’ motion for preliminary injunction should be denied.

² Such threats to election workers are only increasing around the country. See Tr. of All Things Considered, *Election Workers Are Already Being Threatened. They’re Worried About 2024*, NPR (June 20, 2023, 4:39 PM), <https://tinyurl.com/yns77es6> (Exhibit H).

BACKGROUND

A. Factual background

Absentee-ballot harvesting has been prohibited in Georgia since at least 2019. Before SB 202, Georgia law allowed only certain authorized individuals—family members or members of the voter’s household—to return completed absentee ballots for voters. *See* O.C.G.A. § 21-2-385(a) (2019). If the voter had a disability and needed assistance returning a completed absentee ballot, the voter was also permitted to have a caregiver return the voter’s ballot. *Id.* The statute identifies who is permitted to return another voter’s ballot to minimize the risk of voter intimidation and fraud. Germany Decl. ¶ 2. Violations of this provision were a misdemeanor. O.C.G.A. § 21-2-598.

To bolster the anti-ballot harvesting provisions of O.C.G.A. § 21-2-385(a), the Georgia legislature passed SB 202, which raised the crime to a felony for knowingly violating those provisions. O.C.G.A. § 21-2-568(a). Plaintiffs only seek injunctive relief regarding the *new* criminal penalties under O.C.G.A. § 21-2-568(a)(5) and not the underlying (and longstanding) prohibitions contained in O.C.G.A. § 21-2-385(a) that were misdemeanors before SB 202.

Before 2020, moreover, Georgia law did not provide for absentee ballot drop boxes for the return of completed absentee ballots. Mashburn 3/7/23 Dep.

73:18-75:5; Mashburn 3/14/23 Dep. 173:6-174:20. In 2020, in response to the COVID-19 pandemic, the Georgia State Election Board (SEB), pursuant to authority granted under emergency authorization, issued an emergency rule authorizing the use of absentee ballot drop boxes to allow voters an additional option to deliver their completed absentee ballots to election officials without having to directly interact with election officials. *See* Ex. 201 to Mashburn 3/14/23 Dep., Ga. State Election Bd., Rule 183-1-14-0.8-.14, Absentee Voting, Secure Absentee Ballot Drop Boxes (Exhibit D). Local counties were permitted, but not required, to use drop boxes. Those that used drop boxes had to place them on county or municipal government property subject to specific security measures. Still, several counties failed to comply with the security requirements. *Id.*; Mashburn 3/7/23 Dep. 81:16-83.

Following the November 2020 general election and January 2021 runoff, the SEB and Georgia Secretary of State (SOS) received numerous complaints of ballot harvesting associated with the emergency drop boxes. Mashburn 3/7/23 Dep. 73:18-77, 81:16-83:9; Dep. Tr. of C. Ryan Germany 209:15-211:3 (Mar. 7, 2023) (“Germany 3/7/23 Dep.”) (Exhibit E); Germany Decl. ¶¶ 7, 13. Counties also received these complaints—and some received public records requests for the surveillance video related to the drop boxes. Germany 3/7/23 Dep. 209:10-211:3; Germany Decl. ¶ 16. In many cases, the video’s quality was

so poor that it was effectively useless in evaluating the complaints. Germany 3/7/23 Dep. 210; Mashburn 3/7/23 Dep. 77. As a result, public confidence in the safety and security of absentee ballot drop boxes was shaken—even though the SEB and SOS were unable to verify any actual tampering or fraud in their investigations. Mashburn 3/7/23 Dep. 167:2-170:7; Mashburn 3/14/23 Dep. 81-83:15. Following the January 2021 runoff election, the emergency authorization that allowed for drop boxes expired, and drop boxes were no longer authorized by law. Mashburn 3/14/23 Dep. 72:14-73:24.

Shortly after the expiration of that emergency authority, the General Assembly decided that certain aspects of the drop boxes authorized were worth retaining. Accordingly, SB 202 provided that drop boxes would be *required* going forward, with each county required to have at least one drop box and larger counties having additional drop boxes in proportion to the county's population. But the legislature also took steps to protect Georgia voters and the integrity of its elections by responding to the issues it encountered in the 2020 election cycle. Accordingly, SB 202 ensured that drop boxes were only authorized inside the county election office or early voting locations, placed under constant human surveillance, and accessible only during hours of early in-person voting. Mashburn 3/7/23 Dep. 73:18-77; O.C.G.A. § 21-2-382(c). As a result, in the 2022 elections, the SEB and SOS did not receive the complaints

about drop boxes they had received following the 2020 election cycle. Germany Decl. ¶ 21.

Voters with disabilities have access to drop boxes on the same basis as other voters. Both groups make arrangements to access the drop boxes at the early-voting locations or election offices during early voting hours, Monday to Saturday with the possible additional Sundays during the early voting period. O.C.G.A. § 21-2-382(c)(1); *id.* § 21-2-385(d)(1). Voters returning absentee ballots to drop boxes do not have to wait in line with those seeking to vote in person. *See* Dep. Tr. of Georgia ADAPT 108:25-109:2 (Feb. 20, 2023) (“ADAPT 2/20/23 Dep.”) (Exhibit F) (acknowledging that drop box voters “didn’t have to wait in line”); *id.* at 31:8-17 (recognizing that drop box voters could “go inside and drop [their ballot] off”). And all voters remain able to return their completed absentee ballots in the mail.

B. Procedural background

Not content to let the legislature resolve these matters, Plaintiffs filed their lawsuit on March 29, 2021. [Case No. 21-cv-01284-JPB, Doc. 1]. But they decided they were not so harmed that the challenged provisions needed to be enjoined during the 2022 elections, and the challenged provisions have thus been in effect for over two years after the filing of these complaints, and through multiple elections. More than two years after they started this case,

on the eve of the close of discovery and as the parties were beginning to draft summary-judgment motions, Plaintiffs finally sought *preliminary* injunctive relief. [Doc. 546].

LEGAL STANDARDS

Plaintiffs seeking a preliminary injunction must establish that: “(1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.” *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc). Injunctive relief is extraordinary relief never granted as of right and should not be granted lightly. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

ARGUMENT

Plaintiffs fail to carry their burden of showing that the “extraordinary remedy” of a preliminary injunction is appropriate. They cannot show that either the Ballot-Harvesting Penalty or the Drop Box Provisions deny voters with disabilities meaningful access to absentee vote-by-mail under Title II of the Americans with Disabilities Act or Section 504 of the Rehabilitation Act. And they do not satisfy any of the other preliminary injunction factors.

Accordingly, Plaintiffs' motion should be denied.

I. Plaintiffs Fail to Show That They Are Likely to Succeed on the Merits.

Plaintiffs' motion is brought exclusively under Title II of the ADA³ and Section 504 of the Rehabilitation Act,⁴ claims which are evaluated under the same standard. *L.E. ex rel. Cavorley v. Superintendent of Cobb Cnty. Sch. Dist.*, 55 F.4th 1296, 1301 n.2 (11th Cir. 2022); [Doc. 546-1 at 10]. To state a Title II claim, "a plaintiff generally must prove (1) that he is a qualified individual with a disability; (2) that he was either excluded from participation in or denied the benefits of a public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and (3) that the exclusion, denial of benefit, or discrimination was by reason of the plaintiff's disability." *Bircoll v.*

³ Title II of the ADA provides:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130(a).

⁴ Section 504 of the Rehabilitation Act (29 U.S.C. § 794(a)) provides:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Miami-Dade Cnty., 480 F.3d 1072, 1083 (11th Cir. 2007). To determine if a person was excluded from a public service or activity, the ADA focuses on the program *as a whole* to determine if voters with disabilities have meaningful access to the program. 28 C.F.R. § 35.150(a). The Supreme Court has explained that, to “assure meaningful access, reasonable accommodations in the grantee’s program or benefit may have to be made.” *Alexander v. Choate*, 469 U.S. 287, 301 (1985) (footnote omitted, emphasis added).

Courts in this circuit recognize that mere “[d]ifficulty in accessing a benefit,” as Plaintiffs’ allege, “does not by itself establish a lack of meaningful access.” *Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1329 (N.D. Ga. 2017). Nor are qualified individuals “entitled to the accommodation of her choice, but only to a reasonable accommodation.” *Stewart v. Happy Herman’s Cheshire Bridge, Inc.*, 117 F.3d 1278, 1286 (11th Cir. 1997) (quoting *Lewis v. Zilog, Inc.*, 908 F. Supp. 931, 948 (N.D. Ga. 1995)). Thus, meaningful access does not “require the governmental entity to provide *every* requested accommodation.” *Medina v. City of Cape Coral*, 72 F. Supp. 3d 1274, 1278 (M.D. Fla. 2014) (emphasis in original; citations omitted); *accord Todd*, 236 F. Supp. 3d at 1334 (“a reasonable accommodation need not be ‘perfect’ or the one ‘most strongly preferred’ by the plaintiff, but it still must be ‘effective’” (quoting *Wright v. N.Y. State Dep’t of Corrections*, 831 F.3d 64, 72 (2d Cir. 2016))). “Instead, when an

individual already has ‘meaningful access’ to a benefit to which he or she is entitled, no additional accommodation, ‘reasonable’ or not, need be provided by the governmental entity.” *Medina*, 72 F. Supp. 3d at 1278 (cleaned up). Plaintiffs have not established any likelihood of prevailing under these settled standards.

A. The Ballot-Harvesting Penalty does not violate the ADA or the Rehabilitation Act.

Plaintiffs first claim that, by raising violations of O.C.G.A. § 21-2-385(a) from a misdemeanor to a felony under rules governing illegal intimidation and meddling with the ballots or vote of a voter under O.C.G.A. § 20-2-568(a), the legislature has denied voters with disabilities meaningful access to absentee vote-by-mail. [Doc. 546-1 at 13-14].⁵ Under the standards discussed above, Plaintiffs are incorrect.

The felony penalties for violating the ballot return rules do not deny voters with disabilities meaningful access to the absentee vote-by-mail program. What Plaintiffs ignore is that there are multiple ways for voters with disabilities to participate in the absentee vote-by-mail program and to do so on equal footing with other voters. Title II requires nothing more. *Democracy*

⁵ Prior to SB 202, violations of O.C.G.A. § 21-2-385(a) were a misdemeanor. O.C.G.A. § 21-2-598. If the Ballot-Harvesting Penalty is enjoined, such violations will still be crimes, but will be misdemeanors again.

N.C. v. N.C. State Bd. of Elections, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA). Accordingly, Plaintiffs’ Motion for Preliminary Injunction should be denied as to the challenge to the Ballot-Harvesting Penalty.

But Plaintiffs’ claims also fail when addressed more granularly. Plaintiffs suggest that “neighbors, friends, or nursing facility staff” may not qualify as caregivers because the term “caregiver” is not defined in the statute. [Doc. 546-1 at 13, 15].⁶ They also claim that other residential staff at locations such as psychiatric hospitals, group homes, or other congregate settings may

⁶ The circumstances here are fundamentally different than those in *Democracy N.C.* There, North Carolina law specifically prohibited nursing home staff from returning a resident’s absentee ballot. Even so, that court found that the limitation, contrary to Plaintiffs’ representation, while in violation of Section 208 of the Voting Rights Act, did not violate Title II of the ADA. 476 F. Supp. 3d at 232-33; *see also id.* at 238-39 (enjoining only the assistance and marking provisions, not the ballot return provisions at issue here). Even the more recent case in North Carolina cited by Plaintiffs (at 19) on this same prohibition only addressed the issue under Section 208 and not under Title II of the ADA as is relevant here. *Disability Rts. N.C. v. N.C. State Bd. of Elections*, No. 5:21-CV-361-BO, 2022 WL 2678884, at *1 (E.D.N.C. July 11, 2022).

fall outside of O.C.G.A. § 21-2-385(a). [Doc. 546-7 ¶ 16]. Yet Plaintiffs have not identified a single incident where a friend, neighbor, nursing home staff, or other residential facility provider was prosecuted, questioned, or prevented from returning an absentee ballot on behalf of a voter with a disability.

Their vagueness concerns are also illusory. When construing Georgia law, an undefined term should be given its common meaning. *Stubbs v. Hall*, 840 S.E.2d 407, 415 (Ga. 2020) (“... we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would”). If further clarification is needed, Georgia courts “may look to other provisions of the same statute, the structure and history of the whole statute, and the other law—constitutional, statutory, and common law alike—that forms the legal background of the statutory provision in question.” *Fed. Deposit Ins. Corp. v. Loudermilk*, 826 S.E.2d 116, 120 (Ga. 2019). Under any common understanding of the term “caregiver,” none of the groups referenced by Plaintiffs are categorically excluded and most individuals within those classifications fall squarely within a common definition of caregiver. Indeed, O.C.G.A. § 21-2-385(a) specifically states that the caregiver of the disabled elector may mail or deliver the absentee ballot, “regardless of whether such caregiver resides in such disabled elector's household.” Moreover, the record lacks any instances where any friend, neighbor, or nursing facility staff asked

by a voter with a disability to return his or her ballot was questioned, let alone charged with violating O.C.G.A. § 21-2-385(a) before or after SB 202.

Nor can Plaintiffs establish that the Ballot-Harvesting Penalty is facially unlawful. Only voters with disabilities who—because of their disability—require assistance returning their absentee ballot, are entitled to assistance under Section 208 of the VRA. 52 U.S.C. § 10508 (“Any voter *who requires assistance to vote by reason of* blindness, disability, or inability to read or write may be given assistance ...” (emphasis added)).⁷ Similarly, under Georgia law, any voter with disabilities may utilize the assistance of a family member, household member, or caregiver to help return a completed absentee ballot, with the addition of a caregiver providing *greater* assistance to voters with disabilities than permitted to other voters. O.C.G.A. § 21-2-385(a).

Further, the circumstances here are fundamentally different from those found in *Carey v. Wisconsin Elections Commission*, 624 F. Supp. 3d 1020 (W.D. Wis. 2022), where the court faced a ruling by the Wisconsin Supreme Court categorically “prohibiting voters from giving their ballot to a third party, and the court identified *no exceptions* for disabled voters.” *Id.* at 1028 (emphasis

⁷ This, however, is all academic since Plaintiffs do not raise a claim under Section 208 in their motion.

added). By contrast, the Georgia Attorney General (twice) and Georgia Supreme Court have both held that, in federal elections, voters with disabilities are entitled to assistance consistent with Section 208 of the Voting Rights Act, even if Georgia statutory law is more restrictive, something Plaintiffs acknowledge. *Holton v. Hollingsworth*, 270 Ga. 591, 593, 514 S.E.2d 6, 9 (1999); [Doc. 546-1 at 15 n.6 (citing 2016 Ga. Op. Att’y Gen. 02 (2016); 1984 Ga. Op. Att’y Gen. 34 (1984))]. The burden Plaintiffs claim voters with disabilities face under the Ballot-Harvesting Penalty is simply a fiction.

This is also borne out in the declarations submitted with the motion. Matt Hargroves’ declaration, for example, suggests that homeless-shelter staff regularly returned ballots for homeless voters with disabilities under O.C.G.A. § 21-2-385(a) before SB 202 without any issue. Only now, Hargroves claims he is confused by the provision and will not return ballots for homeless voters with disabilities even though part of his job appears to be assisting with the care of the voter. [Doc. 546-12 ¶¶ 8-11, 13]. But he provides no answer as to why SB 202’s making violations of this law a felony—while maintaining the same statutory term “caregiver” that has been the law for years—has contributed to

his confusion.⁸

The same is true of the other declarations. Empish Thomas, a blind voter, puts her own personal limitation on the term caregiver by excluding someone who is clearly a caregiver—her assistant whom she pays to assist her with daily tasks she cannot complete because of her disability—from the scope of the statute. [Doc. 546-4 ¶¶ 14-15]. She also notes that she prefers to vote in-person, then complains about transportation to an absentee ballot drop box that is available at the same place she would vote in person and during the same voting hours. [Doc. 546-4 ¶¶ 3, 5, 17]. And though she reports difficulty voting in 2022, the hardship she claims she experienced was caused by poll workers, not the provisions of SB 202—and not the State Defendants. [Doc. 546-4 ¶¶ 24-36].

Even with this testimony, the motion fails to explain how a voter with a disability is denied meaningful access to absentee vote-by-mail. Nothing in O.C.G.A. § 21-2-385(a) prevents ADAPT or Hargrove from taking a voter with a disability to a drop box or a U.S. mail receptacle to return an absentee ballot.

⁸ Zan Thornton likewise claims that ADAPT will not “touch[]” a ballot for a voter with a disability and will only take a voter to a drop box, but not put the ballot in the box for the voter. [Doc. 546-13 ¶ 23]. Thornton too fails to explain how SB 202’s making ballot harvesting a felony without substantively changing what the law criminalizes has changed ADAPT’s behavior.

Nothing in the ADA requires that *every* voter be able to use *every* means of returning a ballot in precisely the manner they choose, or that *every* “obstacle” be removed. It only requires voters with a disability to have “meaningful access” to the program. *Medina*, 72 F. Supp. 3d at 1279. Indeed, when it comes to facilities, not every facility must be accessible so long as *some* facility is accessible to a citizen with disabilities. *Shotz v. Cates*, 256 F.3d 1077, 1080 (11th Cir. 2001).

None of this, however, is the subject of the requested injunctive relief. Rather, Plaintiffs only seek an injunction against the Ballot-Harvesting Penalty that applies to the entirety of O.C.G.A. § 21-2-385(a), and which serves the State’s compelling interest in preventing ballot harvesting. Following the numerous complaints of ballot harvesting following the 2020 election, and to better ensure that voters were not subject to intimidation, or the type of meddling seen in recent elections in North Carolina, the Georgia Assembly chose to increase the penalties for violation of this provision to make it on par with other prohibited conduct that affects the security and integrity of Georgia’s elections, thus serving that compelling State interest. Germany Decl. ¶¶ 8, 26. Plaintiffs offer no persuasive basis for concluding that the Ballot-Harvesting Penalty denies meaningful access to absentee voting by mail, especially since the same provision did not apparently do so when the

penalty for violating the ballot return provision was a misdemeanor before SB 202.

In a last effort to manufacture a violation of the ADA as to the Ballot-Harvesting Penalty, Plaintiffs cite *American Council of Blind of Indiana v. Indiana Election Commission*, No. 1:20-cv-03118-JMS-MJD, 2022 WL 702257 (S.D. Ind. Mar. 9, 2022). Doc. 546-1 at 14. The issue there, however, involved the *requirement* for certain voters with disabilities to use what was called the “Traveling Board” when voting by mail, a method that denied them the ability to cast a secret ballot.⁹ *Am. Council of Blind*, 2022 WL 702257, at *8. Here, voters with disabilities have the same rights and ability to use absentee vote-by-mail as other voters, either with or without assistance; they are not required to use a system that provides them less access to absentee vote-by-mail. The circumstances in that case are not remotely comparable, and Plaintiffs have failed to demonstrate that the Ballot-Harvesting Penalty violates the ADA or the Rehabilitation Act.

⁹ Georgia’s Dominion voting machines include significant disability-access components, allowing blind voters (and other voters with disabilities) to cast a secret ballot without assistance on the same equipment as all other voters and resulting in a ballot that looks the same as all other voters, which is not the case in most states. Germany Decl. ¶ 9.

B. The Drop Box Provisions do not violate the ADA or the Rehabilitation Act.

Plaintiffs next claim that having absentee ballot drop boxes inside and accessible only during early voting hours makes it “difficult or impossible” for voters with disabilities to access the drop boxes. [Doc. 546-1 at 16]. This claim is belied by Plaintiffs’ own witnesses.

One such witness is Mr. Wendell Halsell, a 65-year-old male who lost the use of his leg and cannot drive. He voted on Election Day in May 2022 and found the walk to the polling location inside the church (his home precinct) difficult for him. [Doc. 546-14 ¶¶ 2-4]. Mr. Halsell then elected to vote absentee vote-by-mail for the November 2022 general election and to return his ballot through a drop box rather than the U.S. mail. Even though his nephew drove him to the absentee drop box location, Mr. Halsell chose to walk inside by himself without any assistance from his nephew, even though Mr. Halsell experienced a longer walk than he could do alone in May 2022. According to Mr. Halsell, the drop box he accessed was located a distance from the entrance of the building and he needed assistance walking up the exterior ramp and then time to rest while walking to the drop box. He did the same thing in December 2022. [Doc. 546-14 ¶¶ 6-10].

But, to the extent that Mr. Halsell needed an accommodation, Georgia

law provides him the very accommodation that he failed to avail himself of—the ability of his nephew to accompany him and deposit the ballot in the drop box. O.C.G.A. § 21-2-385(a) (“[M]ailing or delivery may be made by the elector’s . . . nephew”). And, if Mr. Halsell found that accommodation unsatisfactory, Georgia law also allows him to return his ballot by U.S. mail—a process that would have alleviated the need for him to travel to a drop box, whether inside or outside. The multiple reasonable accommodations for voters with disabilities like Mr. Halsell satisfy Title II. *Democracy N.C.*, 476 F. Supp. 3d at 233. Mr. Halsell’s choice to ignore the various alternatives and means of assistance available to him under Georgia law doesn’t make SB 202 invalid. *Todd*, 236 F. Supp. 3d at 1334; *Medina*, 72 F. Supp. 3d at 1279.

These same reasonable accommodations were available to Patricia Chicoine, who chose to deliver her ballot to a drop box because she does not “trust the mail.” [Doc. 546-5 ¶ 12]. Her distrust of the mail, however, and any anxiety that stems from it, does not create a violation of the ADA. *Todd*, 236 F. Supp. 3d at 1333. Nor can her negative experience using a drop box in October 2021—after a local election official moved the absentee ballot drop box from the library’s lobby to the end of a long hallway—be attributed to SB 202. [Doc. 546-5 ¶¶ 7-9]. And, in any event, her distress could have been alleviated had she brought the cane she typically uses for walking. *Id.* ¶ 7.

Plaintiffs’ other arguments are equally unpersuasive. For example, they point (Doc. 546-1 at 8) to transportation barriers as a burden for accessing drop boxes available only during early voting hours. But transportation issues are not created “because of disability,” and it would be wrong to find a violation of Title II related to the drop boxes on that basis. *See Democracy N.C.*, 476 F. Supp. 3d at 232–33 (finding that plaintiff’s potential inability to find a witness for his absentee ballot was due to the lock-down status of his nursing home and not his disability, thus a rule that prohibited nursing home staff to witness a ballot did not violate Title II of the ADA). Moreover, early voting is available for several weeks, including on certain Saturdays and an optional one or two Sundays. O.C.G.A. § 21-2-385(d)(1). And, for voters who struggle to obtain transportation, the U.S. mail is also available.¹⁰ Voters with and without disabilities thus have the same options for participating in absentee vote-by-mail, and the location and hours of drop box availability does not deny voters with disabilities meaningful access to the program.¹¹

¹⁰ *See* State of Ga., *Vote by Absentee Ballot*, <https://georgia.gov/vote-absentee-ballot> (last visited June 25, 2023) (voters can “[m]ail [a] completed ballot,” “hand-deliver [an] absentee ballot to [their] county registrar,” or “[b]ring [their] ballot to [their] county’s drop box”).

¹¹ While Plaintiffs want absentee drop boxes placed outdoors and available 24 hours a day, they do not provide any evidence on how many voters with disabilities either used the absentee ballot drop boxes in 2020/2021 “after

Nor can Plaintiffs find support in the cases they cite. For example, in *Shotz v. Cates*, 256 F.3d 1077 (11th Cir. 2001), on which Plaintiffs rely, the structural barriers to the courthouse, the only place to attend court proceedings, deprived persons with disabilities of meaningful access. *Id.* at 1080–81. But here, because Georgia provides voters with disabilities multiple ways to return a ballot, *Shotz* is inapposite.

D.R. ex rel Courtney R. v. Antelope Valley Union High School District, 746 F. Supp. 2d 1132 (C.D. Cal. 2010) is also readily distinguished. There, the plaintiff student simply asked for an elevator key to access the second floor of the school without having to wait for an escort. *Id.* at 1137-38. Here, however, voters with disabilities are not *required* to use any particular means of returning a ballot and are not *required* to utilize any form of assistance, thus, they are not being denied the ability to vote and return their ballot

hours” or any that were unable to participate in the absentee vote-by-mail program due to the location and hours of the drop boxes in 2022. An injunction removing the limitation of drop boxes indoors during certain hours does not mean drop boxes are placed at the street for drive-by drop off as Plaintiffs seem to intimate. Rather, they do not even say how many drop boxes were placed in a location where a voter could drive up and put a ballot in the drop box or if these were located at places required by O.C.G.A. § 21-2-382(c), which Plaintiffs do not challenge. Even for the unnamed individual who is apparently only able to walk 10 yards before having to stop, the injunction sought does not guarantee him a more convenient drop box or alter the various accommodations already provided under Georgia law that provide him access to absentee vote-by-mail, including using the U.S. mail. [Doc. 546-7 ¶ 17].

independently. Instead, they have the freedom to meaningfully participate with or without a variety of accommodations made available in the statute.

Plaintiffs' reliance on *Civic Association of the Deaf of N.Y.C., Inc. v. Guiliani*, 915 F. Supp. 622 (S.D.N.Y. 1996) is also misplaced. [Doc. 546-1 at 17-18]. There, the city planned to remove all emergency alarm boxes from the street, which left deaf and hearing-impaired citizens with no means of reporting emergencies. In the era before cell phones, only public pay phones—which, for obvious reasons, were not accessible to deaf individuals—were available. The removal of emergency alarm boxes thus would have denied those individuals *any* access or means of reporting an emergency. *Civic Ass'n of the Deaf*, 915 F. Supp. at 635. The stark differences between the circumstances in *Civic Association* and here are self-evident: Georgia provides voters with disabilities meaningful access to absentee vote-by-mail by providing them several means of returning an absentee ballot in addition to in-person voting options. For these reasons, the Drop Box Provisions are also lawful under the ADA and the Rehabilitation Act.

II. Plaintiffs Have Not Shown That They Will Suffer Irreparable Injury.

Plaintiffs also fail to show that they will suffer irreparable harm because they delayed seeking injunctive relief through multiple elections and because

neither of the Challenged Provisions violates the ADA or the Rehabilitation Act.

A. Plaintiffs' delay demonstrates there is no irreparable harm.

Plaintiffs' delay confirms that they will not suffer irreparable injury absent an injunction. As the Eleventh Circuit holds, “[a] delay in seeking a preliminary injunction of even only a few months—though not necessarily fatal—militates against a finding of irreparable harm.” *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016). Indeed, “the very idea of a *preliminary* injunction is premised on the need for speedy and urgent action to protect a plaintiff’s rights before a case can be resolved on its merits.” *Id.* (emphasis in original). Plaintiffs’ delay of more than two years in filing their motions “necessarily undermines a finding of irreparable harm.” *Id.* And, considering that Plaintiffs have the burden of demonstrating irreparable injury, *id.* at 1247, this is fatal to their motion.

Plaintiffs filed their complaints within days of SB 202’s March 25, 2021 enactment. Now, more than two years later, they seek supposedly urgent relief. But Plaintiffs immediately face a problem: they decided such relief was not necessary in the 2022 elections. The Court should not countenance this attempt to short-circuit the ordinary litigation process—especially as Plaintiffs’ own conduct plainly shows that these provisions can appropriately

govern during an election. Their unnecessary and significant delay is sufficient to deny Plaintiffs' request for preliminary injunctive relief. *Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J., concurring); *Coalition for Good Governance v. Kemp*, No. 1:21-cv-2070-JPB, 2021 WL 2826094, at *3 (N.D. Ga. July 7, 2021).

B. The Ballot-Harvesting Penalty does not harm Plaintiffs.

Nor can Plaintiffs show irreparable harm flowing from the Ballot-Harvesting Penalty. They seek to enjoin the Ballot-Harvesting Penalty even though its sole purpose is to increase the penalty for violating rules that have been in place since well before SB 202, while simultaneously not seeking any injunctive relief against the rules themselves. [Doc. 546-1 at 10]. In doing so, they cite no prosecution or penalty for a caregiver or other person allegedly violating O.C.G.A. § 21-2-385(a) involving the return of the ballot of a voter with a disability. Thus, any harm absent an injunction is entirely speculative and contingent on the possibility of some future action of which there is no precedent. As the Supreme Court has repeatedly held, “[i]ssuing a preliminary injunction based only on a *possibility* of irreparable harm is inconsistent” with “injunctive relief as an extraordinary remedy.” *Winter*, 555 U.S. at 22 (emphasis added). Plaintiffs thus cannot satisfy this indispensable requirement for a preliminary injunction.

Further, *even if* Plaintiffs succeeded in showing that they are harmed by O.C.G.A. § 21-2-568(a)(5)'s making violations of O.C.G.A. § 21-2-385(a) *felonies*, they cannot show that an injunction of that section would prevent the harms they allege because—if that section were enjoined—Georgia law would still treat violations of O.C.G.A. § 21-2-385(a) as misdemeanors as was the case prior to the passage of SB 202. O.C.G.A. § 21-2-598 (“Except as otherwise provided by law, any person who violates any provision of this chapter shall be guilty of a misdemeanor.”). Nowhere in Plaintiffs’ motion do they attempt to show that they would only be willing to violate the anti-ballot harvesting provision if that violation subjected them only to misdemeanor penalties such as imprisonment up to a year. *See* O.C.G.A. § 17-10-3.

Additionally, Plaintiffs do not provide any basis for their contention that they cannot find an authorized person to assist with the return of their ballot, whether by using the U.S. mail, delivering the ballot to an election official, or depositing the ballot in an authorized absentee ballot drop box. They claim that, because there is no definition of the term “caregiver,” people suddenly no longer want to help, or Plaintiffs just do not want to ask. [Doc. 546-1 at 14-15]. Yet, while they offer the example of Mr. Halsell and Ms. Thomas choosing to not use available assistance to access a drop box, they cite no example of anyone having been denied needed assistance in returning an absentee ballot

by someone listed in O.C.G.A. § 21-2-385(a).

In any event, as explained above, the Ballot-Harvesting Penalty does not violate the ADA or the Rehabilitation Act, so Plaintiffs are not harmed by it. Plaintiffs have not offered any evidence that, before SB 202, any voter with a disability was disenfranchised or faced any burden in finding qualified assistance in returning a completed absentee ballot under O.C.G.A. § 21-2-385(a) despite the then-present misdemeanor penalties. Indeed, witness Hargroves never had any issue, before SB 202, returning absentee ballots for voters with disabilities staying at the homeless shelter where he works. [Doc. 546-12 ¶¶ 8, 11]. The Ballot-Harvesting Penalty does not change what is permitted. There is simply no evidence of irreparable harm.

C. The Drop Box Provisions do not harm Plaintiffs.

Nor do the provisions requiring drop boxes be indoors and accessible only during early voting hours cause irreparable harm. As explained above, those provisions do not violate either the ADA or the Rehabilitation Act, and therefore Plaintiffs' reliance on cases finding violations of those laws to be irreparable harms are inapposite. But even looking beyond the legality of the Drop Box Provisions, Plaintiffs have still failed to establish any harm. Each witness offering testimony was able to vote and, if they chose, to use a drop box. As Plaintiffs' own expert, Dr. Lisa Schur notes, every form of voting

inherently creates burdens on voters with disabilities [Doc. 546-3 ¶¶ 72, 75, 83], but—as addressed in detail above—there is no evidence that the location and hours of accessibility of absentee ballot drop boxes *denies* voters with disabilities meaningful access to absentee vote-by-mail or even limits that access. Indeed, those who experienced trouble personally accessing a drop box declined alternative means of returning their ballot or assistance clearly available under the statute.

For example, Mr. Halsell discussed how it took so long for him to walk to the drop box for both the November and December 2022 elections. *See* [Doc. 546-14 ¶¶ 7-10]. However, he failed to explain why he did not have his nephew, who drove him to the drop box, return the ballot for him, which is expressly permitted under Georgia law. *Id.* Similar deficiencies plague allegations of harm from Ms. Wiley, who claims the front room at her polling location where the drop box was located was too narrow for her son to use due to his powered wheelchair (an issue not fairly attributable to State Defendants). [Doc. 546-25 ¶ 7]. Of course, Georgia’s absentee vote-by-mail allows voters with disabilities to use drop boxes, but also allows them to use authorized individuals to return their ballot (as Ms. Wiley did for her son) or to send the ballot through the USPS—an option similarly available to every voter. Plaintiffs simply fail to show that the provisions challenged, either individually or in combination,

make access to absentee vote-by-mail so burdensome that it would reasonably be viewed to “dissuade[] [voters with disabilities] from attempting to vote at all.” [Doc. 546-1 at 22].

Because Plaintiffs failed to show that either of the challenged provisions subjects them to irreparable harm, they cannot obtain an injunction.

III. The Balance of Equities and the Public Interest Weigh Heavily Against an Injunction Especially at this Late Date.

Plaintiffs also fail to carry their burden on the other equitable factors.

First, Plaintiffs’ requested relief would require the Court to act as the Georgia legislature. While Plaintiffs claim that implementing their requested modifications would not create a burden on the State, they are not only incorrect but fail to consider the State’s interests. Initially, as the court in *Democracy N.C.* noted:

While the court does not comment upon the efficacy or wisdom of each request, it is not the court’s role to rewrite North Carolina’s election law.

476 F. Supp. 3d at 218. “[T]he federal Constitution provides States—not federal judges—the ability to choose among many permissible options when designing elections” so “federal courts don’t lightly tamper with election regulations.” *Id.* (quoting *Thompson v. Dewine*, 959 F.3d 804, 812 (6th Cir. 2020)). Yet that is precisely what Plaintiffs want the Court to do: rewrite or blue-pencil Georgia’s

election law, allowing unfettered violations of the ballot return provisions and eliminating the very protections the legislature deemed necessary to justify the new absentee ballot drop box provisions. For a federal court, such statutory rewriting would be wildly inappropriate. *See One Georgia, Inc. v. Carr*, 599 F. Supp. 3d 1320, 1337 (N.D. Ga. 2022).

Second, Georgia would be irreparably harmed if it were unable to enforce its statutes. As the Eleventh Circuit has held, “[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Hand v. Scott*, 888 F.3d 1206, 1214 (11th Cir. 2018) (cleaned up). By enjoining the challenged provisions, the Court would impair the State’s ability to safeguard the integrity of the election and address confusion, suspicion, and loss of confidence in Georgia’s election processes. *See Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 261, 266 (D. Ariz. 2020) (granting state’s motion to intervene because the statute at issue was “meant to safeguard the integrity of the election process,” an interest that “cuts to the core of the State’s role in effectuating the democratic process”); Mashburn 3/7/23 Dep. 167:2-170:7; Germany Decl. ¶¶ 27-33.

States, moreover, have a valid interest in protecting the integrity and security of the voting process. *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2340 (2021) (discussing laws enacted to combat voter fraud); *id.* at 2347

“preserving the integrity of [a State’s] election process” is a “compelling” interest (citation omitted)); *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam) (same); *Rosario v. Rockefeller*, 410 U.S. 752, 761 (1973) (“It is clear that preservation of the integrity of the electoral process is a legitimate and valid state goal.”); *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (stating that the “right to vote freely for the candidate of one’s choice is of the essence of a democratic society”); accord *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1353 (11th Cir. 2009). And here, protecting voters with disabilities and voters in general from ballot-harvesting efforts is both a compelling State interest and served by the ballot return provision and associated criminal penalties at issue here. Germany Decl. ¶¶ 8, 18, 21, 26. Under Plaintiffs’ requested relief, voters with disabilities could become a target for the fraudulent and intimidating behaviors that Georgia law is designed to prevent—for the benefit of both the voter with a disability herself and the integrity of Georgia’s election system.

The Drop Box Provisions also restore public confidence in elections. Even without the ability to verify that fraud occurred with drop boxes under emergency authorization in 2020, the SEB and SOS received numerous complaints of ballot harvesting associated with outside drop boxes. Mashburn 3/7/23 Dep. 82:4-83:14. The video surveillance was often inadequate to properly determine what occurred, creating more suspicion among the public.

Germany Decl. ¶¶ 11, 14, 17; Mashburn 3/7/23 Dep. 73:18-78, 81-83:17. But SB 202’s drop box provisions alleviated these concerns in the 2022 elections. Germany Decl. ¶ 21; Mashburn 3/7/23 Dep. 83:18-21.

As the Supreme Court has explained, moreover, states do not have to wait until they “sustain some level of damage before the legislature” may “take corrective action.” *Burson v. Freeman*, 504 U.S. 191, 209 (1992) (citation omitted). Instead, the State may “respond to *potential* deficiencies in the electoral process with foresight rather than reactively.” *Id.* (citation omitted, emphasis added); *see also Brnovich*, 141 S. Ct. at 2348 (a State need not wait to “sustain some level of damage before the legislature [can] take corrective action” (citation omitted)).

Here, leaving absentee ballot drop boxes outside with only questionable video surveillance subjects counties and the State to allegations of ballot harvesting and tampering that must be investigated. Germany Decl. ¶ 15. The reasonable security measures regarding drop boxes in SB 202 do not deny voters with disabilities meaningful access to absentee vote-by-mail or to drop boxes specifically. Yet, to have the Court rewrite Georgia law on where absentee drop boxes can be located, the hours they are to be accessible, with the corresponding security monitoring protocols does not weigh in favor of the

relief Plaintiffs seek.¹² Not only does this Court lack the authority to take a pen to Georgia’s laws, *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1255 (11th Cir. 2020) (rejecting the writ-of-erasure fallacy), but it would be wrong to do so here. “Only in an exceptional circumstance will a statute not be rationally related to a legitimate government interest and be found unconstitutional under rational basis scrutiny.” *Williams v. Pryor*, 240 F.3d 944, 948 (11th Cir. 2001) (footnote omitted). This is not such an “exceptional” case.

Third, beyond such state interests, the injunction would also harm the public. To the extent Plaintiffs would be willing to violate the prohibition on ballot-harvesting if it subjected them only to a misdemeanor, then enjoining the felony penalties for improper ballot return would potentially subject Georgia voters, those with and without disabilities, to the interference or intimidation the provision combats. It is precisely such conduct found recently in a neighboring state along with allegations of ballot harvesting in the 2020 election cycle that led the Georgia Assembly to increase the penalty for violations of the ballot-harvesting provision to put it on par with other conduct

¹² Plaintiffs do not challenge the provision requiring constant human surveillance of absentee ballot drop boxes. This provision would then require any county offering outside drop boxes to provide the additional expense and logistics of 24-hour personal security for the drop boxes at potentially significant expense. Germany Decl. ¶ 30.

affecting the security and integrity of Georgia's elections. Germany Decl. ¶ 8.

Regarding the Drop Box Provisions, the public confidence would again be tested with the inevitable claims of ballot tampering or ballot harvesting seen in the 2020 elections. The SEB and SOS would again have to investigate such claims, claims that did not arise under Georgia's current statutory scheme of allowing absentee drop boxes only indoors during early voting hours.

Fourth, to enjoin the location and hours provisions of O.C.G.A. § 21-2-382(c) would either eliminate all drop boxes (because drop boxes continue to be available after the 2020 emergency authorization only because SB 202 specifically provided for them with the additional safeguards) or create hardship for Georgia counties—given that human security personnel would be required to monitor the boxes 24 hours a day in an outdoor location. Further, just *permitting* drop boxes to be outside does not mean that all counties would do so or place them for drive-up or areas that satisfy every voter with a disability. *See, e.g., People First of Ala. v. Merrill*, 491 F. Supp. 3d 1076, 1138 (N.D. Ala. 2020) (noting that enjoining a ban on curbside voting would not mean that all counties would necessarily provide curbside voting).

Fifth, with the 2024 elections less than a year away, the relief Plaintiffs seek would cause confusion and unduly burden the State. As noted above, an injunction against the Ballot-Harvesting Penalty would suggest that the State

cannot vigorously prosecute unlawful behavior that impacts the integrity and security of the election, including protecting the very voters Plaintiffs represent from intimidation. Additionally, the confusion that would result and steps the State would have to go through to put drop boxes outdoors is more than a mere physical relocation; it involves significant coordination and resources to provide the security required to protect against tampering and ballot-harvesting. Accordingly, the Court should avoid the requested last-minute and confusing changes to Georgia's elections processes. *Purcell*, 549 U.S. at 5. Rather, the Court should address these claims through the upcoming dispositive motions and, if necessary, a trial on the merits.

In sum, any supposed harm suffered by Plaintiffs is substantially less than the harm to the public and the State. When balanced against the identified harms to the State and the public, Plaintiffs' purported harms pale in comparison. For this reason, too, an injunction is inappropriate.

CONCLUSION

Plaintiffs have fallen far short of their burden to clearly demonstrate each of the required elements for a preliminary injunction. Plaintiffs' questionable case on the merits, their inexplicable delay, lack of irreparable harm, and the balance of interests militate strongly against an injunction. The Court should thus deny Plaintiffs' belated motion for preliminary injunction.

Respectfully submitted this 29th day of June, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing document 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
Gene C. Schaerr

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

IN RE GEORGIA SENATE BILL 202

Master Case No.:
1:21-MI-55555-JPB

**EXHIBIT INDEX TO STATE DEFENDANTS'
RESPONSE IN OPPOSITION TO AME PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION [DOC. 546]**

Ex.	Exhibit Description	Attach.	Attachment Description
A	Declaration of C. Ryan Germany (June 29, 2023)	1	Email from Zachary Manifold, Elections Supervisor, Gwinnett Cnty. Bd. of Voter Registrations & Elections, to Brittaney Williams (Feb. 1, 2022), with link to YouTube video
B	Deposition Transcript, T. Matthew Mashburn (Mar. 7, 2023) [excerpted]		
C	Deposition Transcript, T. Matthew Mashburn (Mar. 14, 2023) [excerpted]		
D	Exhibit 201 to March 14, 2023 Deposition of T. Matthew Mashburn		Ga. State Election Bd., Rule 183-1-14-0.8-.14, Absentee Voting, Secure Absentee Ballot Drop Boxes

Ex.	Exhibit Description	Attach.	Attachment Description
E	Deposition Transcript, C. Ryan Germany (Mar. 7, 2023) [excerpted]		
F	Deposition Transcript, Georgia ADAPT (Feb. 20, 2023) [excerpted]		
G	Exhibit 5 to May 18, 2023 Deposition of Lorraine C. Minnite, Ph.D.		Gabriella Borter, <i>North Carolina Republican Operative Charged in Election Fraud Scheme</i> , Reuters (Feb. 27, 2019, 11:28 AM)
H	Transcript of Audio Recording		All Things Considered, <i>Election Workers Are Already Being Threatened. They're Worried About 2024</i> , NPR (June 20, 2023, 4:39 PM), https://tinyurl.com/yns77es6

State Defendants' Response in Opposition to
AME Plaintiffs' Motions for Preliminary Injunction [Doc. 546]

EXHIBIT A

In re Georgia Senate Bill 202
No. 1:21-mi-55555-JPB
June 29, 2023

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

IN RE GEORGIA SENATE BILL 202

Master Case No.:
1:21-MI-55555-JPB

DECLARATION OF C. RYAN GERMANY

I, C. Ryan Germany, declare under penalty of perjury that the following statements are true and accurate to the best of my knowledge.

Background

1. When SB 202 was enacted, I was the General Counsel for the Office of the Georgia Secretary of State. I held that position from January 2014 until January 2023. My job responsibilities included providing legal advice and guidance to all divisions of the Secretary of State's Office, including the Elections Division. I also worked closely with the State Election Board. I routinely interacted with county election officials.

Absentee Ballot Return under O.C.G.A. § 21-2-385(a)

2. Georgia has long regulated who may return a completed absentee ballot on behalf of another voter. Prior to the issuance of an attorney general opinion in June 2016, the State Election Board regularly deemed cases where

voters returned ballots of other voters as violations of Georgia code and referred them to the Attorney General's office. Prior to the 2016 Attorney General Opinion, Georgia law was interpreted so that voters without disabilities had to return or mail their own ballot and voters with physical disabilities could have their ballots returned by authorized family members or people residing in their household. Subsequent to the 2016 Attorney General Opinion, the Georgia General Assembly amended applicable law in 2019 with HB 316 to clarify that (as had been the previous interpretation) only certain individuals could return ballots on behalf of other voters. Compared to the pre-2016 Attorney General Opinion interpretation of Georgia law, HB 316 expanded the authorized individuals who could return ballots for all electors (authorized family members plus people who reside in the same house) and for voters with disabilities specifically (the aforementioned people plus caregivers, specifically stating that caregivers did not have to reside with the voter with disabilities).

3. As perhaps best shown by recent convictions in North Carolina, ballot harvesting creates opportunities for election fraud and the disenfranchising of voters. To address that risk, Georgia law, prior to SB 202, provided that only certain individuals could return an absentee ballot for another voter. Those provisions are contained in O.C.G.A. § 21-2-385(a).

4. For instance, Georgia law permits non-disabled voters to ask a family member or member of his/her household to return the ballot by mail or to an election official. *Id.* The list of qualifying family/household members who may return an elector's ballot is extensive: A ballot can be returned by the "elector's mother, father, grandparent, aunt, uncle, brother, sister, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, or an individual residing in the household of such elector." *Id.* With the authorization of the use of drop boxes in Georgia (by State Election Board emergency regulation in 2020 which expired following the 2020 election cycle and by SB 202 following that expiration), such authorized individuals may also return the ballot to an authorized ballot drop box.

5. Additionally, Georgia law ensures that voters with disabilities have access to even more options for returning their ballot. For instance, voters with disabilities may have a family or household member return their ballot, just like a non-disabled voter. In addition, however, a caregiver can return a ballot for a voter with disabilities, with the law specifically stating that the caregiver does not need to reside with the voter. The caregiver can return the voter's ballot by mail, delivery to an election official, or, because of SB 202, to an authorized drop box. With the exception of drop boxes, this

provision predates SB 202 and organizations like Plaintiffs have not previously suggested that it caused confusion or somehow impeded voters with disabilities ability to vote by absentee ballot in Georgia.

6. While Georgia law does not specifically define the term “caregiver” as used in O.C.G.A. § 21-2-385(a), I am not aware of that term generating questions or confusion from election officials. I believe that most voters and election official have consistently given the term its common, broad meaning. I am unaware of any instance where a complaint has been made regarding someone who asserted that they were a caregiver for a disabled person not actually being a caregiver. I am also not aware of anyone ever being charged with a violation of not being a caregiver to a voter with disabilities when they have asserted that they are.

7. Georgia’s experience in recent elections led to SB 202’s inclusion of additional guardrails to ensure that all voters’ ballots are protected when they are in the process of being returned, while still allowing multiple options for absentee ballot return for all voters, including voters with disabilities. Claims of ballot harvesting associated with the use of the drop boxes during the 2020 election were one of the most common complaints that the Secretary of State’s office dealt with following that election. Those complaints also led to burdensome and time-consuming open records requests to county election

officials for surveillance video of those drop boxes. County election officials not responding to those requests in a timely manner or not having the requested records led to still more complaints to the Secretary of State's office. Dealing with complaints and open records requests (some of which are abusive and harassing to county election officials) takes time and bandwidth from both state and county election officials that would be better spent preparing for or actually administering elections.

8. Prior to SB 202, giving unlawful assistance to a voter was already a felony pursuant to O.C.G.A. §21-2-568. Following the numerous complaints of ballot harvesting following the 2020 election, and to better ensure that voters were not subject to intimidation or the type of meddling seen in recent elections in North Carolina, the General Assembly chose to increase the penalties for violation of this provision to make it on par with other prohibited conduct that affects the security and integrity of Georgia's elections.

9. For voters with disabilities who choose to vote in person, Georgia's Dominion voting machines include significant disability-access components, allowing blind voters (and other voters with disabilities) to cast a secret ballot without assistance on the same equipment as other voters.

Absentee Ballot Drop Boxes

10. The first time that absentee ballot drop boxes were utilized in Georgia was in the 2020 election cycle, and that authorization was due to an emergency rule promulgated by the State Election Board. Emergency rules were allowed in 2020 because of the statewide state of emergency due to the COVID-19 pandemic. Emergency rules expire by operation of law 120 days after they are adopted.

11. After the authorization of absentee ballot drop boxes through State Election Board emergency rule, the Secretary of State's office received reports that some counties were not fully following the security provisions that the emergency rule required. For instance, some drop boxes in Fulton County did not have proper video surveillance at the outset. In other instances, the video surveillance did not produce a clear and useable record for monitoring the drop box. Secretary of State investigators also found that DeKalb County was not properly following the required chain of custody procedures.

12. Elsewhere, there were instances of an election worker who was charged with picking up the absentee ballots from the drop box not properly securing the drop box upon leaving. With drop boxes outside, this would allow nefarious actors to remove or destroy ballots placed in the drop box. With inside drop boxes only open when other election officials are present, as SB 202

requires, that mistake would be quickly caught and the likelihood of unauthorized access is greatly reduced.

13. Additionally, following the November 2020 general election and January 2021 runoff election, the State Election Board and Secretary of State received numerous complaints regarding claims of ballot harvesting where the ballots were returned via a drop box. One was based on a video from a surveillance camera posted to YouTube. See Exhibit 1.

14. In many cases, the video surveillance did not allow further investigation because it was either too dark, the picture was not clear, the location of the camera did not fully capture the event, or the voter could not be identified.

15. Each complaint had to be investigated by the local county and/or the State Election Board with possible referral to the Secretary of State or law enforcement for further action.

16. Similarly, I am aware that many counties received numerous public records requests for copies of the surveillance video from the various drop boxes, creating a significant burden on local officials to comply with such requests.

17. For the cases where further investigation was possible (i.e. where it was possible to identify a voter), Secretary of State investigators determined

that the people on video dropping off multiple ballots were authorized to do so. One, for example, was simply dropping off ballots for his immediate family. But other cases were unable to be further investigated, leading to persistent belief from some corners of the population that extensive ballot harvesting occurred in the 2020 election. Regulating the number of drop boxes, moving them inside, and only making them available to the public when multiple election officials are present should reduce both the number of complaints about drop boxes and the amount of burdensome open records requests sent to counties. In fact, both of those things proved to be true in the 2022 election cycle.

18. Balancing a need to combat these issues while also choosing to ensure that voters have the benefits of drop box availability, the General Assembly chose to provide, for the first time, a statutory requirement that every county in Georgia provide a drop box, subject to prudent security controls of requiring the drop boxes to be located indoors, available only during early voting hours, and under constant human surveillance when in use. These additional security measures were designed to address the numerous complaints received associated with drop box usage, reduce the burdens on county election officials in responding to burdensome open records requests, increase safety for county election officials who were charged with picking up

ballots from drop boxes in response to instances of those workers being followed and of outdoor drop boxes being stalked by vigilantes, allow for faster reporting of results, and reduce the potential for fraud.

19. I am also aware of instances in jurisdictions outside of Georgia where absentee ballot drop boxes placed outside were destroyed or otherwise tampered with.

20. Specifically, under SB 202, Georgia counties must now have at least one drop box available. But that drop box must be sufficiently secured to protect the integrity of the ballot and public confidence in absentee-by-mail voting. O.C.G.A. § 21-2-382(c).

21. With the provisions of SB 202 in place for the 2022 elections, neither the State Election Board nor the Secretary State received anywhere near the volume of complaints regarding drop boxes or ballot harvesting that they received following the 2020 election.

22. Further, county election officials were not faced with burdensome public records requests regarding the video footage surrounding a drop box as they were following the 2020 election.

23. In setting these criteria, the General Assembly also deferred to the expertise of county election officials. Under SB 202, local county officials have discretion, subject to the parameters in the law, on where inside a building the

absentee drop box is located, the height of the drop box for accessibility especially by those who use a wheelchair, and signage to assist voters in easily and quickly locating the drop box to avoid any confusion of whether the voter has to stand in line to return a completed absentee ballot to the absentee ballot drop box.

24. Under O.C.G.A. § 21-2-382(a), local officials may establish other buildings to collect completed absentee ballots in person subject to the provisions of Georgia law.

25. Historically, the United States Postal Service also delivers any absentee ballots that are deposited in the U.S. Mail to election officials, even without regard to proper postage. I am not aware of any change in that policy by USPS.

26. For all these reasons, SB 202's drop box provision strikes an important balance between providing multiple ballot return options for Georgia voters who choose to vote by mail and ensuring that the State's election system operates efficiently and safely for voters and election officials, minimizes opportunities for and allegations of fraud, and allows as many voters as possible to have confidence in the result.

Impact of an injunction

27. Considering these important interests, an injunction would impose various harms on the State.

28. With respect to drop boxes, moving them back outside, getting rid of the human surveillance requirement and the population-based ceiling on amount, and leaving them open until 7 p.m. on election night would lead to the same issues that arose during and following the 2020 elections—slower reporting of results, more potentially dangerous situations for county election workers, numerous complaints, and burdensome open records requests.

29. Should the entire drop box provision of SB 202 be enjoined, it would eliminate all drop boxes, thereby depriving Georgia voters of the specific voting methods that Plaintiffs purport to promote.

30. If the Court were to make Plaintiff's requested modifications to Georgia law, it is not clear that those modifications would even be feasible. By only striking the requirements for absentee ballot drop boxes to be located indoors and available during early voting hours, local counties would be required to provide, at great expense, 24-hour personal security for each drop box during the entire early voting period. Plaintiffs do not even attempt to address how this would be done. That is likely because it would be infeasible and prohibitively expensive for counties.

31. Even the Plaintiffs' suggestion that reimposing the emergency rule (and eliminating the human surveillance requirement) would still create hardship for the State and the counties. The counties would have to ensure they had proper equipment that could monitor the drop boxes, something that, as noted above, was a significant issue in the 2020 election cycle and for which there is no provision in SB 202. Some counties would need to purchase such equipment all together, as not all counties offered absentee ballot drop boxes during the 2020 election cycle. Further, it would subject the counties to more public records requests for surveillance videos of the drop boxes and impose on the State the obligation of investigating the various claims of irregularities associated with absentee drop boxes located outside and available at all hours as was the case in the 2020 election cycle.

32. Finally, there is no requirement to satisfy the Plaintiffs' apparent demand for drive up drop boxes. To do so, the Court would have to create a system where such locations complied with necessary security requirements while still being located on county owned property.

33. Such decisions are the prerogative of the Georgia Assembly, or if authority were to be granted, the State Election Board.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and accurate to the best of my knowledge, information, and belief.

6/29/23
Date


C. Ryan Germany

EXHIBIT 1

From: Manifold, Zachary <IMCEAEX-_O=EXCHANGELABS_OU=EXCHANGE+20ADMINISTRATIVE+20GROUP+20+28FYDIBOHF23SPDLT+29_CN=RECIPIENTS_CN=3A8043293138474EA8196F907752EE9B-MANIFOLD+2C+20Z@namprd17.prod.outlook.com>
Sent: Tuesday, February 1, 2022 12:39 PM
To: Williams, Brittaney
Subject: Drop Box Video

Here is the video so you have it.

Suwanee video

<https://m.youtube.com/watch?v=VjeiZrXYHXQ&feature=youtu.be>



Zach Manifold | Elections Supervisor / Supervisor de Elecciones
Gwinnett County Board of Voter Registrations and Elections / Junta de
Inscripción de Electores y Elecciones del Condado de Gwinnett | Phone /
Teléfono: 678.226.7234
Address / Dirección: 455 Grayson Highway, Suite 200, Lawrenceville, GA
30046 Zachary.Manifold@GwinnettCounty.com | GwinnettCounty.com
Find us on @GwinnettGov and [Sign up](#) for email newsletters!

State Defendants' Response in Opposition to
AME Plaintiffs' Motions for Preliminary Injunction [Doc. 546]

EXHIBIT B

In re Georgia Senate Bill 202
No. 1:21-mi-55555-JPB
June 29, 2023

THOMAS MATTHEW MASHBURN 30(b)(6)
IN RE GEORGIA SENATE BILL 202

March 07, 2023

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

IN RE GEORGIA SENATE BILL 202

Master Case No:
1:21-MI-55555-JPB

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30(B)(6) VIDEOTAPED DEPOSITION OF  
GEORGIA STATE ELECTION BOARD  
(THOMAS MATTHEW MASHBURN)

March 7, 2023

9:59 a.m.

1600 Parkwood Circle, Suite 200

Atlanta, Georgia

Marcella Daughtry, RPR, RMR  
Georgia License No. 6595-1471-3597-5424  
California CSR No. 14315

1 don't recall any others.

2 Q Okay.

3 A Not to say that there isn't, but I don't recall  
4 it.

5 Q Okay. Did the State Election Board correspond  
6 with the Secretary of State's Office on compliance with  
7 S.B. 202's requirement that the Secretary of State  
8 develop a method for -- method of secure electronic  
9 transmission of absentee ballot applications?

10 A No, the -- we -- again, we had no budget and no  
11 staff, but the Secretary of State's Office was way ahead  
12 of us on that. They were already very proactive.

13 Q To your knowledge, did the SEB receive any  
14 complaints about compliance with this requirement about  
15 secure electronic transmission of absentee ballot  
16 applications?

17 A None that I recall.

18 Q All right. So now moving on to drop boxes.

19 A Okay.

20 Q S.B. 202 reduces the availability of drop boxes  
21 to the lesser of one per every 100,000 active registered  
22 voters in the county or one per early voting site in the  
23 county, correct?

24 A I don't agree that it reduces it. And let me  
25 explain that further. Drop boxes were created by the



1 State Election Board in response to the pandemic and the  
2 governor's emergency declaration. And so what happened  
3 was, the counties came to us and they said, we are  
4 closing the building. And right when -- right when COVID  
5 hit, the courthouses were the super spreaders, and we had  
6 probate judges that were dying in -- and just it seemed  
7 like it happened just regularly. And so they were  
8 shutting down the courthouse, and they came to us and  
9 said, create a way where we can have touchless people  
10 dropping off ballots where they used to drop them off.

11 So at the end of the governor's emergency  
12 declaration, there were no drop boxes anymore authorized  
13 under state law. So S.B. 202 creates drop boxes where  
14 there would have been none otherwise. So I don't -- I  
15 don't agree that it reduces. It -- it creates drop  
16 boxes. And then the -- it does have a provision that you  
17 don't have just one per county, but you have it on --  
18 based on population, so the bigger counties get more drop  
19 boxes.

20 Q Well, just to clarify, there could have, in  
21 theory, been drop boxes, right, with S.B. 202, you know,  
22 regardless of S.B. 202?

23 A There -- there has been an -- there has been  
24 arguments that the provision about creating additional  
25 registrations might have allowed it, but the

1 counterargument was always, well, no, there is no  
2 provision for unattended registration sites.

3 So in the Board's view, there were no drop  
4 boxes that existed upon the expiration of the governor's  
5 emergency order. There were no drop boxes in Georgia.

6 Q Okay. S.B. 202 requires drop boxes to only be  
7 inside elections offices and early voting sites instead  
8 of outside unless the governor declares an emergency,  
9 correct?

10 A Correct. Yeah. I was hearing a lot of  
11 complaints in the run up to the election that people were  
12 going, you've got these drop boxes out in the middle of  
13 nowhere and nobody is watching them. And I'm like, well,  
14 first of all, we've got video surveillance on every one  
15 of them that's required. But the problem with that is,  
16 the counties were erecting drop boxes that -- that they  
17 knew weren't in compliance with the law and -- and beyond  
18 their ability to service.

19 For example, we had the case where Fulton  
20 County erected at least four drop boxes that -- that they  
21 knew erecting them didn't have video surveillance.

22 MS. MILORD: I would object to that.

23 THE REPORTER: Who was that?

24 MS. MILORD: That's Sandy Milord on behalf of  
25 Fulton County.

1 THE WITNESS: Okay. But --

2 MR. SCHAERR: Excuse me. Counsel, are you  
3 objecting to the question?

4 MS. MILORD: I'm objecting to testimony of  
5 saying Fulton County did something knowingly in violation  
6 of the law. You can't testify to what was done knowingly  
7 with someone's state of mind.

8 MR. SCHAERR: So just to be -- just to be  
9 clear, you are not objecting to the question?

10 MS. MILORD: That's correct.

11 MR. SCHAERR: Okay.

12 THE WITNESS: I -- I think the Board made a  
13 ruling on it and sent it off to the Attorney General's  
14 Office for -- for processing. So I think -- I think that  
15 the record stands for itself, but that was -- the  
16 decision of the Board was that this was a violation  
17 without question.

18 So we had the problem where that this was  
19 coming out before the election even happened, that people  
20 were saying this, and so you want both the perception and  
21 the reality. You want the reality that it's secure, but  
22 you want the perception that it's secure, and people were  
23 just more comfortable if it was inside the county and  
24 observed. And so you just heard that, that people like  
25 that better and so that's where that came from.

1 Q BY MS. KHAN: Okay. S.B. 202 limits the hours  
2 in which a drop box is available to the hours of  
3 operation of that office or early voting site, correct?

4 A Right.

5 Q And S.B. 202 mandates an election official, law  
6 enforcement officer, or a licensed security guard surveil  
7 drop boxes at all times, correct?

8 A Yeah. The -- the drop boxes have to be  
9 observed, correct.

10 Q All right. And before S.B. 202, video  
11 surveillance without a human being present was  
12 sufficient, correct?

13 A Right. Some counties erected drop boxes  
14 with -- they used trail cameras that people used to  
15 detect the presence of deer, but we were finding that the  
16 problem was the drop boxes' surveillance wasn't always  
17 erected in mind that you could see the person and what  
18 they were doing. So there were some that were too dark,  
19 you couldn't really see it, and you couldn't see the  
20 person's face. You couldn't identify them.

21 And so this was to have a situation where you  
22 got somebody observing it, because we were finding there  
23 were just -- there were just too many holes with -- with  
24 the video surveillance wasn't doing what we wanted it to  
25 do.

1 Q If I collectively refer to all of these changes  
2 with respect to drop boxes and S.B. 202 as the "drop box  
3 limitations," you will know what I mean?

4 A Ask me that again.

5 Q If I refer to all of the changes due to S.B.  
6 202 to drop boxes as "drop box limitations," you will  
7 know what I mean?

8 A I don't -- I don't agree with the  
9 characterization, but I will know what you mean.

10 Q Okay. Can you describe the process the SEB  
11 took to implement the drop box limitations?

12 A I don't -- I don't think we passed any  
13 regulations on drop boxes on 202 that I recall. You  
14 might come up with one and say, and this might refresh my  
15 recollection, but I don't recall any.

16 Q Did you provide any guidance to county election  
17 officials on the drop box limitations?

18 A No.

19 Q Did you provide -- did you develop any voter  
20 education materials intended for the public on drop box  
21 limitations?

22 A Regretfully, I had no budget on that.

23 Q Okay.

24 A The Board has no budget on that.

25 MS. KHAN: Okay. I think that this is a good

1 got to admit that there was -- one of the parties was out  
2 there telling people specifically not to vote absentee,  
3 so I don't know how that -- by mail, and so I don't know  
4 how that impacted it. But the Board's impression is that  
5 more people definitely, dramatically more people used it.

6 Q And your reference to one of the parties,  
7 what's that based on?

8 A Yeah, I would go to political breakfasts and  
9 the Republican Party office holder was telling people not  
10 to vote by mail.

11 Q And -- excuse me, just one second. In --

12 A It wasn't -- the people doing it were saying  
13 show up on election day. They weren't telling people not  
14 to vote at all, but they were definitely people --  
15 telling people not to vote by mail.

16 Q Okay. And in 2020 we were discussing the use  
17 of drop boxes. Would you agree that in 2020 the  
18 availability of drop boxes where people could submit  
19 their absentee ballots at any time, 24/7, that was a  
20 greater availability of drop boxes than post S.B. 202?

21 A Yeah, the -- the hours of availability were  
22 definitely longer if they're 24 hours a day versus when  
23 they have closed periods, correct. But it's a -- it's a  
24 trade-off. You're -- you're not just making one decision  
25 in a vacuum. There is all kinds of different influences

1 that you are trying to consider. But yeah, yeah, limited  
2 hours -- fewer hours is definitely smaller than 24 hours,  
3 I agree.

4 Q And you had mentioned pre S.B. 202 the video  
5 surveillance of drop boxes, and the Secretary of State's  
6 Office investigated complaints related to video  
7 surveillance of drop boxes?

8 A Correct. Definitely.

9 Q Okay. And did any of these result in -- you  
10 know, were there any issues actually adjudicated, and  
11 were there actually -- were there any problems with drop  
12 boxes actually found?

13 A Yeah. The -- the Fulton County one comes  
14 immediately to mind. There were a couple of counties;  
15 one, I think it was Telfair County. They didn't have a  
16 secure drop box; they just had a cardboard box, and --  
17 and so it didn't comply with -- I think that was Telfair  
18 County.

19 Then you had several investigations by  
20 complainants that said there was somebody doing, for  
21 example, ballot harvesting, and so the idea behind the  
22 video surveillance was, okay, go ahead and -- and pull it  
23 up. And then when we -- then when the investigators  
24 tried to pull up the video you couldn't see because they  
25 didn't have any lights, for example, or it wasn't

1 positioned where you could see the person.

2 So we found out about problems that -- that  
3 weren't even complaints, but they were other people's  
4 complaints that we came up with the problems.

5 There were other issues that came up with  
6 regard to their tally sheets weren't -- weren't turned in  
7 at all or on time or they couldn't find them, so we had  
8 several cases of that. We had lots of cases involving  
9 paperwork issues.

10 Q But would you agree that these investigations  
11 into the use of drop boxes did not result in -- in  
12 widespread voter fraud?

13 A We didn't -- we didn't -- we didn't discover  
14 any, that I am aware of.

15 Q Okay.

16 A The Board did not discover any that we're aware  
17 of.

18 Q Okay. And have you engaged in any  
19 investigations about drop boxes after the passage of S.B.  
20 2020 -- or S.B. 202, excuse me?

21 A No, the Board has not.

22 Q Okay. All right. Have -- has the Board  
23 considered passing any regulations regarding drop boxes?

24 A Not that I recall.

25 Q Okay. Has -- to your knowledge, has the Board



1 A I would think so.

2 Q Okay. You also said that something the State  
3 Election Board must do is address the reality and the  
4 perception of an election.

5 A I agree.

6 Q Is that correct?

7 A I agree, uh-huh.

8 Q Is it correct when you say "reality," that's  
9 what actually occurred?

10 A Yeah. I agree, yeah.

11 Q Okay. What do you mean when you say  
12 "perception of an election"?

13 A Yeah. I'll give you a good example with regard  
14 to drop boxes. The perception was, you have these things  
15 in the middle of nowhere that are unattended. The  
16 reality of it is they are on government property,  
17 surveyed by video recorder. So that's the difference  
18 between the perception and the -- and the reality.

19 And then you -- and then you have to address  
20 both, and you say, well, what would make you feel better;  
21 if they were attended? Yes. Well, what would make you  
22 feel better; if they are on -- if they're at the county  
23 office? Yes. Okay. All right. So that would -- that  
24 would allay your fears? Yes. Okay. Let's see what we  
25 can do about that.

1 Q Okay. So let's stay with that example, and I  
2 do appreciate the concreteness of the example. So you  
3 said perception of drop boxes, that they're unattended in  
4 the middle of nowhere. Whose perception is that?

5 A I was at -- for example, I was at the Paulding  
6 County -- it was a rally for one of the candidates, and  
7 it was in Paulding County, and a person came up to me and  
8 used those exact words. You've got these -- we don't  
9 have anybody that's monitoring these drop boxes, and they  
10 are out in the middle of nowhere, and they are unattended  
11 and nobody is watching them. And I'm, well, that's not  
12 exactly true. They are on -- they're on -- we  
13 specifically made them be on public property, county  
14 property, and they're monitored by video. Oh, okay. And  
15 so -- you know, and so that was both.

16 It was -- I can't -- I'm not sure I can  
17 remember the candidate, but I was out there touring  
18 Paulding County's election office, and while I was there,  
19 there was a candidate that was doing -- that was having a  
20 rally or something, and so I just went to watch, and  
21 somebody stopped me at the rally and said that.

22 Q And so you don't recall the name of the person  
23 who said this to you?

24 A No, I haven't seen her before or since, no.

25 Q Did you write this down anywhere?

1 A No.

2 Q Did you provide this as a complaint to the  
3 State Election Board?

4 A No, just because it was -- it was a fairly  
5 common event at that time.

6 Q So you just said it was a fairly common event.  
7 Can you tell me the other people who made the same claim  
8 to you?

9 A You would just be at the political breakfast at  
10 Bartow County, for example, and you'd hear this -- you'd  
11 hear something similar. Friends from church, you'd just  
12 hear it.

13 Q So how many times do you think you heard this  
14 complaint? Five?

15 A No.

16 Q Ten?

17 A No. Way more than that.

18 Q Can you give me an estimate?

19 A 20, 30.

20 Q 20, 30. Okay. Did the --

21 A At a -- at a fairly confident minimum.

22 Q That's totally fair.

23 A Yeah.

24 Q And with the caveat that it's a minimum, these  
25 20 to 30 folks, did anyone have longer conversations with

1 them about why they had this perception?

2 A No, it just depended on the context, so a lot  
3 of times you're just like, okay. And then sometimes  
4 they -- they just wouldn't give up on it, and no matter  
5 what you told them, they -- they wouldn't be moved. And  
6 so then you are like, okay, well, thank you for your  
7 comment; I appreciate it, and enjoy the rest of your day.

8 Q You'd agree that Georgia has millions of  
9 registered voters, correct?

10 A Oh, yes.

11 Q Did the SEB do any sort of survey of those  
12 voters regarding drop boxes?

13 A No. No. We had no money to pay for one.

14 Q And you talked with Ms. Khan a little bit about  
15 several different provisions of S.B. 202, and we'll talk  
16 a little bit further about them.

17 A Okay.

18 Q But do you know if the SEB conducted any  
19 studies on the effects of S.B. 202 on voters of color?

20 A No. We had no money for a study.

21 Q Do you know if the Secretary of State's Office  
22 conducted any studies on whether S.B. 202 had -- what the  
23 impact of S.B. 202 was on voters of color?

24 A I don't have any knowledge, so that doesn't say  
25 they did or didn't. I just have no knowledge of it.

State Defendants' Response in Opposition to  
AME Plaintiffs' Motions for Preliminary Injunction [Doc. 546]

# EXHIBIT C

*In re Georgia Senate Bill 202*  
No. 1:21-mi-55555-JPB  
June 29, 2023

T. MATTHEW MASHBURN  
IN RE GEORGIA SENATE BILL 202

March 14, 2023

1

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

4 IN RE:  
5 GEORGIA SENATE BILL 202

Master Case No.  
1:21-MI-55555-JPB

7  
8 REMOTE/IN-PERSON VIDEOTAPED DEPOSITION

9 OF

10 T. MATTHEW MASHBURN

11  
12 March 14, 2023

13 10:13 a.m.

14  
15 1600 Parkwood Circle  
16 Suite 200  
17 Atlanta, Georgia 30339

18 Penny McPherson Walker, CCR-B-914, RPR  
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1 of people being -- in making this too difficult for 11:49:51  
2 people to vote by absentee ballot? 11:49:55

3 A. Yeah, I don't recall any specific 11:49:58  
4 conversations. I don't recall any specific 11:50:00  
5 conversations. I remember I talked to lots of people 11:50:05  
6 about when the stamps became a big issue of whether 11:50:09  
7 or not the state should provide free stamps. I 11:50:13  
8 talked to a lot of people about that when that came 11:50:17  
9 up, but I don't have specific conversations in mind. 11:50:20

10 Q. Have you -- well, let me -- I'm going to 11:50:27  
11 move on to another provision, the provisions related 11:50:28  
12 to drop boxes. 11:50:31

13 A. Yes. 11:50:32

14 Q. What's your -- just, again, just can you 11:50:33  
15 explain your understanding of what changes SB 202 11:50:34  
16 made to Georgia law relating to the use of drop 11:50:37  
17 boxes? 11:50:41

18 A. Yes. I'll actually back up. The board 11:50:41  
19 created drop boxes to respond to the pandemic. And 11:50:46  
20 so we were under a governor -- the governor's 11:50:49  
21 emergency order, and so when the governor's emergency 11:50:52  
22 order expired, drop boxes expired. 11:50:55

23 So SB 202 creates, for the first time, a 11:50:58  
24 statutory basis for drop boxes, and they have to be 11:51:02  
25 in the county, and they have to be under observation 11:51:06

1 by the county employees. And then bigger counties 11:51:09  
2 get more drop boxes than smaller counties. 11:51:13

3 Q. Prior to SB 202, the governor could have 11:51:17  
4 potentially created other parameters around the use 11:51:24  
5 of drop boxes as happened during the pandemic, 11:51:28  
6 correct? 11:51:32

7 A. I don't think the governor created any. 11:51:32  
8 He certainly could put in his emergency order what 11:51:36  
9 limitations he wanted to, but I don't think there 11:51:39  
10 were any limitations put on it by the governor. He 11:51:42  
11 could -- 11:51:46

12 Q. Prior to -- I'm sorry. Go ahead. 11:51:46

13 A. If he -- if he was creating an emergency 11:51:50  
14 order and he wanted to, I'm sure he could, but that 11:51:53  
15 was all us at the board. 11:51:57

16 Q. Thank you. I guess prior to SB 202 there 11:51:58  
17 were no restrictions, no statutory restrictions, on 11:52:01  
18 the use of drop boxes. Correct? 11:52:05

19 A. Yeah, drop boxes were not in the statute, 11:52:07  
20 correct. 11:52:11

21 Q. And so there were no restrictions on the 11:52:11  
22 use of drop boxes in any statute, correct? 11:52:13

23 A. Neither restrictions nor permissions, 11:52:16  
24 correct. 11:52:19

25 Q. And now SB 202 has created -- defined 11:52:20



1 limited circumstances in which drop boxes can be used 11:52:23  
2 and the parameters or rules around how they must be 11:52:26  
3 used, correct? 11:52:30

4 A. Right, yeah. SB 202 says -- SB 202 says 11:52:30  
5 we're going to have drop boxes, and here is how it's 11:52:33  
6 going to work. 11:52:37

7 Q. And I know you covered this a little bit 11:52:38  
8 last time, but just to clarify, you're not aware of 11:52:40  
9 any problems relating to election integrity or voter 11:52:43  
10 fraud arising from the use of drop boxes in the 2020 11:52:47  
11 election; is that right? 11:52:53

12 A. Yeah, I remember we talked about -- last 11:52:53  
13 week we talked about that I heard of complaints that 11:52:57  
14 the drop boxes were out in the middle of nowhere and 11:52:58  
15 nobody was watching them. And you're like, well, no; 11:53:01  
16 they've got to be on county property, and there's 11:53:05  
17 video surveillance. 11:53:05

18 But then the groups that wanted to watch 11:53:08  
19 the video surveillance were complaining that they 11:53:11  
20 couldn't see because they weren't lit well or, you 11:53:14  
21 know, didn't work from the right angle or whatever. 11:53:19  
22 We heard that. 11:53:21

23 Q. So my question is a little bit different. 11:53:24  
24 Again, I'm trying to separate, you know, things that 11:53:27  
25 people raise as possible issues and actual -- 11:53:30

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1 A. Ah. 11:53:33

2 Q. -- issues where in the real world somebody 11:53:34

3 committed effectively election fraud, voter fraud, or 11:53:37

4 something that would interfere with the actual 11:53:41

5 integrity of the election. So, with that 11:53:43

6 explanation, let me ask it again. 11:53:45

7 A. Yeah. 11:53:45

8 Q. Are you aware of any instances of any real 11:53:46

9 world election integrity issues or voter fraud 11:53:50

10 related to the use of drop boxes in the 2020 11:53:53

11 election? 11:53:56

12 A. Yeah, the -- there were more complaints 11:53:57

13 that have been found that have merit against the 11:54:04

14 counties than I anticipated or would have liked. 11:54:08

15 But, at the same time, we looked at the allegations 11:54:11

16 of ballot mules, ballot harvesting, and we dismissed 11:54:14

17 the cases where, for example, a voter was accused of 11:54:21

18 ballot harvesting, and we looked at it, and the 11:54:25

19 investigators from the Secretary of State's office 11:54:28

20 looked at it and said no, this is all his family 11:54:29

21 members, and that's perfectly legal. 11:54:34

22 And so we dismissed cases like that, but 11:54:35

23 there were a fair number -- I think I remember it was 11:54:39

24 Telfair County, for example, had just a cardboard box 11:54:41

25 serving as their drop box, and -- I think it was 11:54:46

1 Telfair County -- and -- but there were a lot of 11:54:49  
2 technical issues that came up with the county 11:54:51  
3 compliance, but I didn't find and the board hasn't 11:54:55  
4 found any widespread voter fraud that actually took 11:54:59  
5 place. 11:55:08

6 Q. Are you aware of any instances where a 11:55:09  
7 voter was found to have misused a drop box by 11:55:11  
8 submitting ballots they should not have been 11:55:15  
9 submitting? 11:55:18

10 A. I don't recall -- I don't recall any case 11:55:18  
11 where we found that. 11:55:21

12 Q. Are you aware of any cases where somebody 11:55:22  
13 violated the integrity of a drop box or broke into a 11:55:29  
14 drop box when they shouldn't have? 11:55:33

15 A. There was one where a county left the key 11:55:35  
16 in the drop box, and so that was a big issue 'cause 11:55:38  
17 anybody that wanted -- that happened by could have 11:55:43  
18 access to it. So that was a problem. I remember 11:55:45  
19 that one. 11:55:48

20 I can't remember whether there were 11:55:52  
21 allegations -- I can't remember whether there were 11:55:55  
22 allegations that only one person was going instead of 11:55:58  
23 two. I can't remember whether that -- whether that 11:56:01  
24 happened or not. I remember -- I remember the issue 11:56:05  
25 coming up, but I don't remember any specific case 11:56:09

1 about that, and I don't know if anybody found that to 11:56:11  
2 be true. 11:56:14

3 The one that immediately pops to mind was 11:56:14  
4 the one where the key was left in. 11:56:16

5 Q. Did anybody access the drop box who wasn't 11:56:21  
6 supposed to, in the case where the key was left in? 11:56:24

7 A. I don't -- I don't remember that. I don't 11:56:28  
8 remember that being part of the record. 11:56:30

9 Q. So, as you sit here, you can't recall a 11:56:33  
10 single instance where a person was found to have 11:56:36  
11 misused the drop box by placing ballots they 11:56:42  
12 shouldn't have or accessing a drop box when they 11:56:46  
13 weren't supposed to. Is that accurate? 11:56:49

14 A. I think that's right. I can't remember of 11:56:51  
15 any specific case of somebody that we've sent on that 11:56:56  
16 was actually harvesting, that was caught harvesting. 11:57:01  
17 I can't remember a case like that in 2020. But there 11:57:04  
18 were instances where people would put stuff in the 11:57:13  
19 drop boxes that wasn't supposed to be there. 11:57:19

20 I don't remember any instances where 11:57:22  
21 somebody, like, damaged, damaged them or damaged 11:57:24  
22 ballots, but I do remember there were like, yeah, 11:57:30  
23 we're getting all kinds of people playing pranks, 11:57:34  
24 putting stuff in, but I don't recall any ballots 11:57:39  
25 being -- I don't recall that. Not to say that didn't 11:57:46

1 happen, but I don't recall it. 11:57:52

2 Q. And you mentioned that there were a number 11:57:56  
3 of complaints about these drop boxes, specifically 11:57:58  
4 related to ballot harvesting and other things. And I 11:58:01  
5 believe you testified about that to some length at 11:58:05  
6 your last deposition. Just to clarify though, 11:58:08  
7 especially as an attorney, you understand that 11:58:11  
8 allegations are neither true nor false until proven 11:58:13  
9 one way or the other; is that fair? 11:58:17

10 A. Well, all right, let's break it down. 11:58:19  
11 Against the accused, allegations are neither true nor 11:58:26  
12 false until they are proven in a court of law; I'm 11:58:31  
13 familiar with that. The problem is, you've got a 11:58:35  
14 different world out there when the allegations are 11:58:37  
15 out there. 11:58:39

16 And so you've got to say: "All right, 11:58:41  
17 what do we need to do to -- is there something we can 11:58:43  
18 do to shore up the perception that this allegation 11:58:49  
19 caused? And, by doing that, do we create other 11:58:52  
20 problems that we'd rather not create?" 11:58:55

21 And so you got to -- you kind of got to -- 11:58:57  
22 you've got to deal with both the fact that the 11:59:00  
23 allegation's out there, and in some cases it's -- you 11:59:05  
24 know, people believe -- you know, sometimes people, a 11:59:09  
25 significant number of people, believe it. And you're 11:59:11

1 like, okay, can we do something to deal with this and 11:59:14  
2 reassure the people that doesn't create other 11:59:17  
3 problems that outweigh the good you're going to get. 11:59:23

4 Q. So if there were a perception that voting 11:59:31  
5 after 4:00 o'clock caused fraud and this was repeated 11:59:35  
6 on the echo chamber of media, would the -- by that 11:59:38  
7 logic, would you take steps to maybe start closing 11:59:43  
8 polling stations at 4:00 o'clock to address that 11:59:47  
9 perception? 11:59:56

10 MR. PRINCE: Objection. Calls for 11:59:56  
11 speculation. You can answer. 11:59:59

12 THE WITNESS: Okay. 12:00:01

13 Yeah, the -- you'd look at -- you'd look 12:00:01  
14 at the allegation, and you'd say, all right, you 12:00:02  
15 know, I don't see that, but let's talk about 12:00:05  
16 this one for drop boxes; particularly, the one 12:00:07  
17 about, well, these boxes are out in the middle 12:00:10  
18 of nowhere. 12:00:12

19 It's like, well, if you're creating the 12:00:13  
20 system for drop boxes from scratch as a new 12:00:15  
21 system, can you address the concept or the worry 12:00:18  
22 that these things are out in the middle of 12:00:21  
23 nowhere unsupervised? Well, okay, yeah, you can 12:00:25  
24 do that. And does that, you know, does that 12:00:28  
25 help the county have a number of drop boxes that 12:00:32

1           they have the infrastructure to service? Yeah,  
2           that helps that.

3                        So it's kind of a -- it's kind of a  
4           balancing act of trying to get to reasonable  
5           apprehension, even if it's unfounded, is it a  
6           reasonable thing that people could be concerned  
7           about, whether it's true or not, and is there  
8           something you can do to build faith in the  
9           system so that people want to participate and  
10          think their vote counts. So you want to try and  
11          achieve that as well.

12          Q.        (By Mr. Jedreski) Did you think it was a  
13          reasonable concern that was raised that people would  
14          be ballot harvesting at drop boxes?

15          A.        I personally -- and that's why we have a  
16          personal deposition, but I personally thought that  
17          the drop boxes had advantages that are not available  
18          in the U.S. Mail. But, you know, in a -- you know,  
19          in a democracy, people get to disagree with me, and  
20          not everybody has the same opinion.

21                        But in my personal opinion, I thought we  
22          had protections in the drop boxes that were not  
23          available in the mail. For example, the video  
24          recording. You don't have video recording that we  
25          have access to with -- at the post office.

1 Q. (By Mr. Jedreski) So did you -- my 12:02:02

2 question was: Did you find it reasonable that there 12:02:04

3 was a concern about ballot harvesting at drop boxes? 12:02:06

4 A. I thought -- I didn't think the people -- 12:02:13

5 I didn't think the people who were saying "these drop 12:02:16

6 boxes are in the middle of nowhere and nobody is 12:02:19

7 watching them" were being crazy. I thought, okay, 12:02:22

8 that's a fair criticism if that's your worry. I can 12:02:25

9 see that that's a fair worry. I thought that was a 12:02:29

10 reasonable concern. 12:02:32

11 I didn't think it was based -- I didn't 12:02:33

12 think it was factually based, but I thought it was 12:02:37

13 something to have a reasonable apprehension about. 12:02:41

14 Q. Why do you think that was a reasonable 12:02:42

15 apprehension? 12:02:45

16 A. Just because it -- if you don't know why 12:02:45

17 we put video cameras and if you didn't know at all 12:02:50

18 that we had daily count sheets set up, you would say, 12:02:55

19 okay, nobody is watching these things, so, you know, 12:03:00

20 there's a problem. But people are watching it, but 12:03:04

21 they didn't -- but nobody knew that, apparently. 12:03:10

22 So ... 12:03:10

23 But, you know, there's stuff that -- 12:03:14

24 there's stuff we hear that's just, you know, the 12:03:16

25 machines were built in Venezuela to keep dictators in 12:03:19



1 power; just stuff that's crazy. But then there's 12:03:25  
2 stuff that just might not be a hundred percent right, 12:03:28  
3 but it's a legitimate concern. 12:03:31

4 Q. But is that concern based on any real 12:03:33  
5 world problems that have actually occurred? And 12:03:37  
6 specifically here talking about the drop box 12:03:40  
7 security. 12:03:44

8 A. Well -- 12:03:44

9 Q. I think what we said is, and correct me if 12:03:45  
10 I'm wrong, but that concern isn't actually based on 12:03:49  
11 confirmed instances of any security breaches, right? 12:03:54

12 A. Yeah, I agree with you there, but we don't 12:03:55  
13 have to wait until something bad actually happens. 12:03:57  
14 We can take proactive steps as a state to deal with 12:04:02  
15 issues that people foresee. 12:04:06

16 And then people disagree. You know, 12:04:08  
17 people have disagreement on that as to what the best 12:04:10  
18 course of action is. 12:04:13

19 Q. So do you think that it was necessary to 12:04:14  
20 add these restrictions to drop boxes to protect 12:04:17  
21 against ballot harvesting or for ballot security? 12:04:20

22 A. Yeah, I thought it was a reasonable -- I 12:04:23  
23 thought it was a reasonable balancing of the various 12:04:26  
24 concerns. I thought it was an acceptable balancing. 12:04:30

25 Q. Did anyone -- did you ever have any 12:04:34

1 conversations with anyone where they expressed 12:04:37  
2 concerns that limiting the ability to use drop boxes 12:04:39  
3 would make it so it was harder for people to vote? 12:04:44  
4 A. Yeah, I think we heard that in public 12:04:57  
5 comment fairly regularly. 12:05:00  
6 Q. What do you think -- do you think those 12:05:01  
7 concerns are reasonable? 12:05:03  
8 A. Again, I'd say, well, we're making it more 12:05:03  
9 convenient. We're instituting this thing so things 12:05:10  
10 are better, but there's not as many as you'd like. 12:05:14  
11 Well, it's still better. You still have this avenue 12:05:17  
12 that you didn't have or you wouldn't have had. 12:05:20  
13 So it's still better, but I understand 12:05:23  
14 your position that you'd like to have more. So I 12:05:25  
15 don't say it's an unreasonable position. 12:05:33  
16 Q. I want to move to another provision of SB 12:05:33  
17 202 relating to the timing of runoff elections. Do 12:05:34  
18 you generally recall the changes that SB 202 made 12:05:38  
19 with regard to runoffs? 12:05:42  
20 A. Yes. We talked about it last week where 12:05:46  
21 we synced the federal and the state, and we 12:05:49  
22 shortened -- we shortened the runoff because just 12:05:55  
23 everybody was just exhausted. Everybody -- there 12:05:55  
24 was -- you know, we're in divided times, but it 12:05:57  
25 seemed like that was universally not liked. 12:06:00

1 ultimately ended up, but I thought it was pretty 15:17:53

2 cool. 15:17:57

3 Q. And then I want to move on to talking 15:17:57

4 about drop boxes. 15:18:00

5 A. Okay. 15:18:01

6 Q. So prior to SB 202, in the summer of 2020, 15:18:02

7 late spring and summer of 2020, the State Election 15:18:07

8 Board passed a regulation allowing drop boxes for the 15:18:11

9 2020 election cycle, correct? 15:18:15

10 A. Correct. 15:18:19

11 Q. And the State Election Board cannot pass a 15:18:20

12 regulation that's contrary to state law, correct? 15:18:25

13 A. I mean, you're kind of in law school 15:18:28

14 question area, and I'm sure that's not what you want 15:18:35

15 out of me, but the board could pass something that 15:18:38

16 contravenes state law, but it would be stricken down 15:18:43

17 by a reviewing court. But the board passed the drop 15:18:48

18 boxes pursuant to the governor's emergency order, so 15:18:52

19 we were acting within our authority. 15:18:57

20 Q. Well -- 15:19:01

21 A. I'm not sure -- I'm not sure I got your 15:19:01

22 question. I'm sorry. 15:19:03

23 Q. No problem. The State Elections Board is 15:19:04

24 authorized to pass regulations under statutory 15:19:12

25 authority, correct? 15:19:17

1 A. Correct. 15:19:18

2 Q. And it can only pass regulations within 15:19:19  
3 its purview of that statutory authority, correct? 15:19:24

4 A. Except for the governor's emergency order 15:19:27  
5 giving us the power to act, I agree with that. 15:19:30

6 Q. And can you tell me what additional powers 15:19:33  
7 did the governor's emergency order give you? 15:19:37

8 A. I'd have to go back and look at it, but 15:19:42  
9 I -- and I don't remember the specific rule, but I 15:19:45  
10 just remember handling a lot of people that said the 15:19:48  
11 board's creation of drop boxes was unconstitutional 15:19:52  
12 and violated the law and we had no, you know, we had 15:19:55  
13 no power to do that. 15:20:00

14 And we were like, no, we were acting 15:20:01  
15 within the governor's emergency declaration. I 15:20:05  
16 remember all -- I remember that allegation being made 15:20:09  
17 a lot. 15:20:11

18 Q. So the regulation that the SB passed 15:20:11  
19 regarding drop boxes in 2020 was lawful? 15:20:21

20 A. Yeah, in my opinion. 15:20:24

21 MS. JHAVERI: So I'm actually going to 15:20:32  
22 show you that regulation. So I'm going to mark 15:20:34  
23 this Exhibit 201. I am going to drop it up 15:20:37  
24 here, and I will also share my screen. Just 15:20:42  
25 give me one moment to do this. 15:20:46

1 (Plaintiffs' Exhibit 201 was marked for 15:20:46  
2 identification.) 15:20:46  
3 MS. JHAVERI: I apologize. One moment. 15:21:11  
4 I think you should see it. 15:21:20  
5 MR. PRINCE: Not yet. 15:21:26  
6 MS. JHAVERI: No? Okay. You know, I can 15:21:27  
7 do this a little more simply. Let's do this. 15:21:28  
8 Q. (By Ms. Jhaveri) Are you able to see my 15:21:35  
9 screen? 15:21:37  
10 A. Yeah. It's real small. Let's see if we 15:21:37  
11 can make it bigger. 15:21:42  
12 Q. I can try and -- 15:21:42  
13 A. Oh, you're making it bigger. Okay, I see 15:21:44  
14 it. 15:21:45  
15 Q. Yes. Is that any better? 15:21:45  
16 A. Let me see if I can make this -- oh, I 15:21:48  
17 can't click on yours. It's still very -- I can't 15:21:48  
18 make it out. If you can make it a full screen; can 15:21:50  
19 you make it like -- that's better. 15:21:54  
20 Yeah, there you go. That's better. 15:21:56  
21 Q. Okay. Is this the -- and so this is the 15:22:02  
22 State Election Board regulation. And, just for the 15:22:04  
23 record, it is Bates stamped USA-04339 to 04340. 15:22:07  
24 A. It sure looks like it, uh-huh. 15:22:23  
25 Q. Okay, great. Now, this -- when you were 15:22:26

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1 talking to Mr. Jedreski earlier and you noted that 15:22:33  
2 some folks were concerned about drop boxes but many 15:22:39  
3 of their concerns stemmed from the fact that they 15:22:44  
4 didn't realize that these drop boxes had to be video 15:22:47  
5 monitored, or that was one of the concerns. Correct? 15:22:52  
6 A. I agree. 15:22:54  
7 Q. And we're going to look at number 5 here. 15:22:55  
8 Do you see number 5 on your screen? 15:23:01  
9 A. Yes. 15:23:04  
10 Q. And does that say: "Video recordings of 15:23:04  
11 the drop box locations must be retained by the county 15:23:07  
12 registrars for 30 days after the final certification 15:23:07  
13 of the election, or until conclusion of any contest 15:23:12  
14 involving an election on the ballot in the county 15:23:16  
15 jurisdiction, whichever is later, and shall be made 15:23:18  
16 available to Secretary of State investigators upon 15:23:21  
17 request or to the public, upon request, as soon as 15:23:25  
18 possible or at a charge that is not cost prohibitive 15:23:26  
19 to the public, if there is a charge"? 15:23:29  
20 A. I agree. 15:23:31  
21 Q. And you mentioned another thing that 15:23:33  
22 voters were confused about or those who raised 15:23:39  
23 concerns about drop boxes was the procedure for 15:23:43  
24 collecting the drop boxes, correct? 15:23:45  
25 A. Yes. 15:23:47

1 Q. Let me clean that up; for collecting the 15:23:48  
2 ballots from the drop boxes. 15:23:52

3 A. Yeah, when we were -- when we were just 15:23:54  
4 looking at this regulation and creating it, we 15:23:56  
5 created a daily log-in so that if a drop box went ten 15:23:58  
6 votes, ten votes, ten votes, ten votes, a thousand 15:24:03  
7 votes, ten votes, we could go pull up the video and 15:24:06  
8 see what happened that day. 15:24:10

9 Q. Right. And you also include in that 15:24:11  
10 regulation number 10 which describes -- and I'm not 15:24:14  
11 going to read the whole thing -- the procedure for 15:24:18  
12 collecting the absentee ballots from the drop boxes, 15:24:21  
13 correct? 15:24:25

14 A. Yeah, the regulation was originally every 15:24:25  
15 24 hours, and then Bartow County came to us and said: 15:24:29  
16 "Hey, we're going broke paying mileage to our people, 15:24:33  
17 so can we pick it up once every three days instead of 15:24:37  
18 every 24 hours," and so we made that change. 15:24:41

19 Q. And so individuals who would have read the 15:24:44  
20 emergency regulation would have known that the drop 15:24:49  
21 boxes were subject to video monitoring, correct? 15:24:54

22 A. I would hope so, yes. 15:24:59

23 Q. And those who have read this regulation 15:25:01  
24 would know that there was a procedure for removing 15:25:04  
25 the absentee ballots from the drop boxes, correct? 15:25:08

1 A. I agree, yes. We would hope so, yes. 15:25:12

2 Q. I think that's all -- I'm going to take 15:25:17  
3 this off the screen. I think that's all we need 15:25:22  
4 here. 15:25:26

5 Now, I want to talk a little bit about 15:25:31  
6 out-of-precinct (inaudible) ballots. 15:25:31

7 A. Okay. 15:25:42

8 THE REPORTER: I'm sorry, ma'am, your 15:25:42  
9 voice dropped again. Talk about ... 15:25:42

10 MS. JHAVERI: Out-of-precinct provisional 15:25:44  
11 ballots. 15:25:44

12 THE REPORTER: Thank you. 15:25:44

13 MS. JHAVERI: Apologies. 15:25:52

14 Q. (By Ms. Jhaveri) So, Mr. Mashburn, I know 15:25:53  
15 we talked about this last week too. I just want to 15:25:56  
16 get the timeline a little bit clearer. You said 15:25:59  
17 there was a period in time when Georgia was not -- 15:26:02  
18 did not allow any out-of-precinct provisional 15:26:04  
19 ballots, and then that changed at some point. 15:26:09

20 Do you have a better recollection today of 15:26:11  
21 when that changed? 15:26:13

22 A. No, I do not. 15:26:14

23 Q. Last week when we discussed this, you 15:26:17  
24 noted that you thought it was about 2018. Is that 15:26:21  
25 correct? 15:26:25



State Defendants' Response in Opposition to  
AME Plaintiffs' Motions for Preliminary Injunction [Doc. 546]

# EXHIBIT D

*In re Georgia Senate Bill 202*  
No. 1:21-mi-55555-JPB  
June 29, 2023

**RULES  
OF  
STATE ELECTION BOARD**

**CHAPTER 183-1  
GEORGIA ELECTION CODE**

**SUBJECT 183-1-14  
ABSENTEE VOTING**

**TABLE OF CONTENTS**

183-1-14-0.8-.14 Secure Absentee Ballot Drop Boxes

**RULE 183-1-14-0.8-.14 Secure Absentee Ballot Drop Boxes**

(1) County registrars are authorized to establish one or more drop box locations as a means for absentee by mail electors to deliver their ballots to the county registrars. Placing a voted absentee ballot into the drop box shall be deemed delivery pursuant to O.C.G.A. § 21-2-385 and is subject to the limitations on who may deliver a ballot on behalf of an elector.

(2) A drop box shall only be located on county or municipal government property generally accessible to the public.

(3) Drop box locations may open beginning 49 days Election Day prior to any presidential preference primary, general primary other than a municipal general primary, general election other than a municipal general election, or special primary or special election in which there is a candidate for federal office on the ballot and the drop boxes for the aforementioned elections shall close at 7:00 p.m. For a statewide or federal special election or a statewide or federal runoff election, drop box locations may begin opening on the first day of advance voting. On Election Day, every drop box shall be closed and ballots collected at 7:00 p.m. Prior to opening a drop box for a new election, the registrar shall ensure that the drop box is empty. Any person acting on behalf of the registrar who opens a drop box prior to an election must have sworn an oath in the same form as the oath for poll officers set forth in O.C.G.A. § 21-2-95 prior to opening the drop box and shall sign a form indicating that the drop box was empty and secure at the time of opening. Counties shall provide notice of the location of each drop box by posting such information on the home page of the county election website no later than the day the drop boxes are placed in a location.

(4) Drop box locations must have adequate lighting and use a video recording device to monitor each drop box location. The video recording device must either continuously record the drop box location or use motion detection that records one frame, or more, per minute until detection of motion triggers continuous recording.

(5) Video recordings of the drop box locations must be retained by the county registrars for 30 days after the final certification of the election, or until conclusion of any contest involving an election on the ballot in the county jurisdiction, whichever is later, and shall be made available to Secretary of State investigators upon request or to the public, upon request, as soon as possible or at a charge that is not cost prohibitive to the public, if there is a charge.

(6) A drop box shall be constructed of durable material able to withstand vandalism and inclement weather. The opening slot of a drop box shall not allow ballots to be tampered with or removed and shall be designed to minimize the ability for liquid to be poured into the drop box or rain water to seep in.

(7) A drop box shall be securely fastened to the ground or an immovable fixture.

(8) If the drop box utilizes a drop-slot into a building, the ballots must drop into a locked container, and both the drop-slot and the container must be monitored by video recording devices.

(9) A drop box shall be clearly labeled "OFFICIAL ABSENTEE BALLOT DROP BOX". Each drop box location shall clearly display signage developed by the Secretary of State regarding Georgia law related to absentee ballot harvesting and destroying, defacing, or delaying delivery of ballots.

(10) Prior to the second Monday before Election Day, the county registrars must arrange for collection of the ballots from each drop box at least once every 72 hours. Beginning on the second Monday before Election Day and up until 7:00 p.m. on Election Day, the county registrars must arrange for collection of the ballots from each drop box location at least once every 24 hours. On Election Day, every drop box shall be closed and ballots collected at 7:00 p.m. Collection of ballots from a drop box must be made by a team of at least two people. Any person collecting ballots from a drop box must have sworn an oath in the same form as the oath for poll officers set forth in O.C.G.A. § 21-2-95. The collection team shall complete and sign a ballot transfer form upon removing the ballots from the drop box, which shall include the date, time, location and number of ballots. After emptying the drop box on 7:00 p.m. on Election Day, the collection team shall close the drop box and indicate on the ballot transfer form that the drop box was emptied and closed. The ballots from the drop box shall be immediately transported to the county registrar and processed and stored in the same manner as absentee ballots returned by mail are processed and stored. The county registrar or a designee thereof shall sign the ballot transfer form upon receipt of the ballots from the collection team.

Authority: O.C.G.A. §§ 21-2-31, 21-2-386

State Defendants' Response in Opposition to  
AME Plaintiffs' Motions for Preliminary Injunction [Doc. 546]

# EXHIBIT E

*In re Georgia Senate Bill 202*  
No. 1:21-mi-55555-JPB  
June 29, 2023

C. RYAN GERMANY  
IN RE: GEORGIA SENATE BILL 202

March 07, 2023

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

|                         |   |                   |
|-------------------------|---|-------------------|
| IN RE:                  | ) |                   |
|                         | ) |                   |
| GEORGIA SENATE BILL 202 | ) |                   |
|                         | ) |                   |
| Plaintiff,              | ) |                   |
| vs.                     | ) | Civil Action No.  |
|                         | ) | 1:21:MI-55555-JPB |
|                         | ) |                   |
| Defendants.             | ) |                   |
|                         | ) |                   |
| -----                   | ) |                   |

VIDEOTAPE DEPOSITION OF  
C. RYAN GERMANY

Tuesday, March 7, 2023, 9:01 a.m.(EST)

HELD AT:

Taylor English Duma LLP  
1600 Parkwood Circle, Suite 200  
Atlanta, Georgia 30339

-----  
WANDA L. ROBINSON, CRR, CCR, No. B-1973  
Certified Shorthand Reporter/Notary Public

1 Q Going to the statement you proposed, do  
2 you know if that statement ever issued?

3 A I don't know.

4 Q What did you mean when you said "Because  
5 federal law drastically and unnecessarily restricts  
6 states from keeping voter rolls up to date"?

7 A I'm talking about the restrictions in the  
8 NVRA about what we have to do from a list  
9 maintenance process when someone has moved.

10 Q Do you recall any subsequent meetings with  
11 --

12 A And, I'm sorry. I say "we." I mean the  
13 Secretary of State's Office, and I should probably  
14 include county election officials as well.

15 Q Do you recall any subsequent meetings with  
16 True the Vote after this meeting you had in the  
17 window period between the election and runoff?

18 A I do recall a meeting where they brought  
19 forward all of their allegations about ballot  
20 harvesting.

21 Q That was after this?

22 A That was after this, I think.

23 Q Roughly when was that?

24 A Well, wait. That was after that first  
25 meeting I talked about. I don't know if it was

1 after -- when these emails occurred.

2 Q It was after the November 2020 election?

3 A Yes. That would have been even after the  
4 January runoff, I believe.

5 Q What do you --

6 A So that second meeting.

7 Q What do you remember them telling you  
8 about their allegations of ballot harvesting?

9 A I remember that they had been doing a  
10 bunch of open records requests to get video, drop  
11 box surveillance videos from counties.

12 I remember them also saying that they had  
13 done what they called -- I think like GEO tracking,  
14 basically using cell phone data to track different  
15 people who had -- and what they said was this showed  
16 people who had 10 or more sort of interactions or at  
17 least were around the same drop box 10 or more  
18 times, and then also went to these kind of liberal  
19 third-party groups six or more times.

20 They had done something and they thought  
21 that indicated that these were, you know, people  
22 doing ballot harvesting operations.

23 They also showed some video that they had,  
24 and I remember my impression was those videos don't  
25 show anything, really. So --

1 Q Okay.

2 A That was -- that's what I recall from that  
3 meeting.

4 Q I want to switch topics.

5 The DOJ asked you about the absentee  
6 ballot application, new ID requirements, so I don't  
7 want to go over ground they already covered.

8 I do want to talk about implementation of  
9 those, of those new requirements.

10 Did the Secretary of State do anything  
11 with respect to implementation of the new absentee  
12 ballot application and ID requirement?

13 A Yes.

14 Q What was that?

15 A One of the first things I know we did was  
16 we had to design a new absentee ballot application.  
17 So we did that, and that was an iterative process  
18 where we had a bunch of different -- we worked with  
19 a company called the Center For Civic Design, that  
20 kind of helps governments create what are meant to  
21 be like usable, clear forms.

22 So we worked on that. And we did the same  
23 thing with the absentee ballot oath envelope. So we  
24 wanted to -- we had to recreate that, in a couple  
25 different ways. One, just based on the language.



State Defendants' Response in Opposition to  
AME Plaintiffs' Motions for Preliminary Injunction [Doc. 546]

# EXHIBIT F

*In re Georgia Senate Bill 202*  
No. 1:21-mi-55555-JPB  
June 29, 2023

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

4 IN RE GEORGIA SENATE BILL Master Case No:  
5 202 1:21-MI-55555-JPB

6 RULE 30(b)(6) VIDEO DEPOSITION OF GEORGIA ADAPT

7 By Witness Suzanne "Zan" Thornton  
8 Taken by Remote Conference and In-Person  
9 February 20, 2023

10 10:43 a.m.

11 Taylor English Duma LLP

12 1600 Parkwood Circle

13 Suite 200

14 Atlanta, Georgia

15 Valerie N. Almand, RPR, CRR, CRC

16 David Ramirez, Legal Video Specialist  
17  
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1 hour and a half, and one of our people that rode  
2 with us was diabetic, and once you're in -- my  
3 understanding, I'm not a lawyer, we can't give her  
4 food and water now that she's in line waiting to  
5 get inside.

6 Q. Given her disability, was she able to  
7 move to the front of the line?

8 A. No, and we're not allowed to go to the  
9 front of the line. We were in the disability  
10 line. They had -- if you're in a wheelchair  
11 they'll let you sit in the front, and it took  
12 about an hour and a half to get to vote.

13 Q. Do you remember which polling location  
14 this was?

15 A. Yeah, Memorial Drive.

16 Q. So it was an hour and a half in the  
17 special disability line?

18 A. In the disability line.

19 Q. The person with the diabetes that you  
20 took, were they actually then able to vote that  
21 day?

22 A. Yes.

23 Q. Any other changes to ADAPT's activities  
24 post S.B. 202 as it relates to its election  
25 activities?

1           A. We mentioned it before about Jessica.  
2       But in -- from my witnessing from being at the  
3       Memorial Drive, the line went out the door, and it  
4       was supposed to be the disability line or special  
5       needs or whatever they call it, over 75, and I saw  
6       people walk away because they didn't want to wait  
7       that long. I saw at least four people walk away.

8           But also the line went out the door, and  
9       so people that wanted to drop off their absentee  
10      ballot waited in line and didn't know to go inside  
11      and drop it off, because the line kind of blocked  
12      the door, and the ballot box for absentee ballots  
13      is right here and you have to cut through all the  
14      people who are waiting in line, and then us in a  
15      wheelchair is up front, and there was not much  
16      room that you to get to the ballot box in Memorial  
17      Drive.

18          Q. Did you speak with any of the election  
19      officials about this lack of access to the drop  
20      box?

21          A. Yes.

22          Q. And who was that? Do you recall?

23          A. I don't recall their name.

24          Q. Do you know what, if anything, they did  
25      about that concern?

1 Q. Yes. I'm trying to eliminate the  
2 pandemic year, and we're talking before S.B. 202.

3 A. We learned about the locations when we  
4 dropped the people off, or got the call for them.  
5 I do not know locations right off the top, no.

6 Q. Currently under S.B. 202 there's a drop  
7 box in each early voting location plus the  
8 supervising election office; is that right?

9 A. I don't know.

10 Q. Are you aware of any drop boxes outside  
11 of early voting locations?

12 A. No.

13 Q. Have you had any members being unable to  
14 return an absentee ballot because they didn't have  
15 access to a drop box?

16 A. Yes.

17 Q. How many folks have told you they did not  
18 return their absentee ballot because they could  
19 not get to a drop box?

20 A. More than five.

21 Q. What reasons did they have for being  
22 unable to return the ballot?

23 A. The boxes weren't available in the  
24 primary because they didn't get there, and we  
25 couldn't reach the boxes. For example, Memorial

1 Drive, they didn't know that they didn't have to  
2 wait in line.

3 Q. Now, the height of the drop box is such  
4 that a voter is unable to reach it to insert it,  
5 can they hand it to a poll worker?

6 A. From what I saw, no. The polls were  
7 under -- there was not enough poll workers to do  
8 such.

9 Q. Did you see a poll worker refuse to  
10 accept an absentee ballot from a voter?

11 A. No.

12 Q. Did you have any member tell you that  
13 it's because of a lack of a drop box they were  
14 unable to actually mail their ballot back?

15 A. Yes.

16 Q. How often -- why were they unable to mail  
17 their ballot?

18 A. Time constraints.

19 Q. Do you know why they had time  
20 constraints?

21 A. Post office couldn't get their ballot in  
22 quick enough.

23 Q. Do you know why there was a delay in the  
24 attempt to return the ballot?

25 A. Post office, they couldn't get to the

State Defendants' Response in Opposition to  
AME Plaintiffs' Motions for Preliminary Injunction [Doc. 546]

# EXHIBIT G

*In re Georgia Senate Bill 202*  
No. 1:21-mi-55555-JPB  
June 29, 2023

2020 U.S. ELECTIONS

FEBRUARY 27, 2019 / 11:28 AM / UPDATED 4 YEARS AGO

# North Carolina Republican operative charged in election fraud scheme

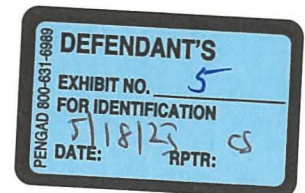
By Gabriella Borter

3 MIN READ



(Reuters) - The North Carolina Republican political operative at the center of an absentee ballot fraud scheme that led the state to order a rerun of a congressional election was arrested and charged with obstruction of justice on Wednesday, officials said.

FILE PHOTO: Mark Harris waits to be introduced during a volunteer meeting and rally at the Ardmore Auditorium in Winston-Salem, North Carolina, April 8, 2014. REUTERS/Chris Keane/File Photo





The operative, Leslie McCrae Dowless, was charged with three felony counts of obstruction of justice, two counts of conspiring to commit obstruction of justice and two counts of possession of absentee ballots, according to court documents.

Allegations that operatives working for Dowless illegally collected, and sometimes filled in, absentee ballots on behalf of Republican Mark Harris' campaign emerged shortly after the Nov. 6 election. They caused the state to hold off certifying Harris' apparent narrow victory over Democrat Dan McCready.

The state Board of Elections, during four days of hearings last week, heard evidence of what election officials

TRENDING STORIES

called a well-funded and well-organized campaign to tip the election for the state's 9th District in the U.S. House of Representatives, which stretches southeast from Charlotte.

The hearings ended with the board ordering a new election, with an official calling the first one an "absolute mess."

The months-long scandal became an embarrassment to President Donald

Trump's Republican Party, which has accused Democrats without proof of encouraging voter fraud in races such as the 2016 presidential election.

Dowless, 63, has previously denied wrongdoing. His attorney, Cynthia Singletary, was not available to comment on Wednesday.

If convicted, he faces a maximum sentence of approximately two years, Wake County District Attorney Lorrin Freeman said.

Four other people who worked for Dowless were each charged with one count of conspiracy to obstruct justice and one count of possessing absentee ballots.

"These indictments should serve as a stern warning to anyone trying to defraud elections in North Carolina," Kim Strach, executive director of the state election board, said in a statement on Wednesday. State officials will meet on Monday to set the date for a new election, she added.

Harris, who had appeared to win by 905 votes out of 282,717 ballots cast, said he would not make a second run for the seat. McCready does plan to run again.

Harris and his campaign officials have said they did not pay Dowless to do anything illegal. But Harris' son, a U.S. attorney, testified that he had warned his father of potential illegal activity by Dowless, causing election officials to question whether Harris turned a blind eye to Dowless' scheme.

Following his son's testimony, Harris himself said a new election was needed.

Reporting by Gabriella Borter in New York;  
editing by Scott Malone, Bill Berkrot and  
Jonathan Oatis

*Our Standards: [The Thomson Reuters Trust Principles.](#)*

State Defendants' Response in Opposition to  
AME Plaintiffs' Motions for Preliminary Injunction [Doc. 546]

# EXHIBIT H

*In re Georgia Senate Bill 202*  
No. 1:21-mi-55555-JPB  
June 29, 2023

HOURLY NEWS  
 WNYC  
 NOW ON AIR Now  
 PLAYLIST



DONATE

ELECTIONS

# Election workers are already being threatened. They're worried about 2024

June 20, 2023 · 4:39 PM ET

Heard on All Things Considered



Chris Arnold

**11-Minute Listen**

PLAYLIST Download  
 Transcript

Election workers across 22 different states told NPR they've received threats or felt unsafe doing their jobs, and many are worried for what the 2024 presidential election will bring.

JUANA SUMMERS, HOST:

Donald Trump keeps lying, saying he won the 2020 election. And that has local election officials fearing for their safety. NPR's Chris Arnold has been digging into this

and finds election workers all over the country are already facing threats as they brace for 2024.

CHRIS ARNOLD, BYLINE: This past midterm election, things were getting pretty intense at the local elections office in Coos County, Ore.

DEDE MURPHY: We would have people in this hallway trying to take pictures of everything we're doing with their phones, you know?

ARNOLD: Dede Murphy, the county clerk at the time, says local people apparently juiced up on misinformation were camped out inside the building day after day.

MURPHY: And some of them were very mean.

ARNOLD: Even though a couple of years before, Trump won in this county with 59% of the vote, Murphy and the other election workers say people would still yell in their faces about voter fraud. Some of it was just kind of weird and ridiculous.

MURPHY: I had one woman - she said, you're a wicked woman. You're doing awful things in there with the ballots.

ARNOLD: Over about a month, a security guard stopped people from bringing a total of 20 guns and 60 knives or other weapons inside. And beyond that, some of the altercations were really frightening.

(SOUNDBITE OF ARCHIVED RECORDING)

UNIDENTIFIED PERSON #1: 911. What's your emergency?

UNIDENTIFIED PERSON #2: Hi. Yes, I work with the county clerk's office. I am currently trying to pick up ballots. I have had somebody following me since I left...

ARNOLD: During the general election last year, a county worker called 911 four times in a single day as he was driving around collecting ballots from drop box. He says a woman in a big Jeep Gladiator truck was following him, videotaping him at each drop box. He says she was armed with a handgun on her belt. He doesn't want to use his name but remembers at one drop box...

UNIDENTIFIED PERSON #2: I see the Jeep Gladiator turn around the corner and drive very quickly down the road and then slam on the brakes and skid to a stop just past me. And then she leaned out of the car and looked at me and yelled, you [expletive] traitor.

ARNOLD: After that, he says, the woman tailgated him right on his bumper, driving erratically, sometimes swerving around next to him.

UNIDENTIFIED PERSON #2: I was terrified. The swerving around my car - I was worried that I might not make it off that road.

ARNOLD: More than two years after January 6, Donald Trump's lie that he won the election is alive and well in a large chunk of the Republican Party. Conspiracy theorists tour the country, speaking at events claiming that elections are rigged. And the misinformation about voter fraud is endangering the people whose job it is to conduct elections. NPR obtained contact information for thousands of local election workers and attempted to reach them. Workers and officials across 22 different states told NPR that they've received threats or felt unsafe doing their jobs.

NANCY BOREN: I actually bring a weapon with me every day to work.

ARNOLD: That's Nancy Boren, the director of elections in Columbus, Ga. We spoke to other election workers in Georgia and Virginia who didn't want to use their names.

UNIDENTIFIED PERSON #3: We have a lot of just general [expletive] views. You're trying to rig the election. You ought to be ashamed of yourself.

UNIDENTIFIED PERSON #4: They said that they were coming from my family, and somebody would have to pay for this.

ARNOLD: In this past midterm election, an official in Arizona tells NPR someone threatened to murder him and his children. The FBI arrested the person. Here's another official in a Southern state who didn't want to use her name for fear of being further targeted.

UNIDENTIFIED PERSON #5: The threat was specifically that the following week that I would not be alive. My home address was made public online. And then my dog was poisoned.

ARNOLD: The dog barely survived. Of course, there is absolutely no evidence of widespread voter fraud. Lawsuits alleging fraud have been thrown out of court by judges all over the country. These election officials are just trying to do their jobs. They're Republicans, Democrats, independents. They're all dealing with this. And it's everyone from top state officials to lower-level county workers who handle ballots or even senior citizen volunteers. David Becker heads up the nonprofit Center for Election Innovation and Research.

DAVID BECKER: Election officials have been under siege. They've been threatened, abused and harassed for nearly three years now, and it's getting worse.

ARNOLD: A recent survey from the nonprofit Brennan Center found that nearly 1 in 3 election workers say that they've had to deal with harassment, abuse or threats. And almost half worry about the safety of their colleagues in future elections.

UNIDENTIFIED PERSON #5: I am very nervous about next year, about the presidential year.

UNIDENTIFIED PERSON #1: I'm nervous about what that's going to look like, too.

ARNOLD: Back in Coos County, Ore., the worker who says he was chased in his car and his wife both work in the local elections office. So they've both been dealing with all this, also while having their first baby. She was 9 months pregnant this past election.

UNIDENTIFIED PERSON #6: During that time, I was scared. And I didn't get to feel safe at home, either.

ARNOLD: She also doesn't want to use her name. She says the couple was followed home from work. They say election denier people knocked on the neighbor's doors, asking questions about them. Like other election workers that NPR talked to, the couple's now set up a motion-sensitive floodlight and a security camera.



UNIDENTIFIED PERSON #1: Our garbage cans were gone through. There was garbage taken out and mail strewn across our yard.

ARNOLD: Oh, you mean like in a cop show or something where they, like, go through the garbage?

UNIDENTIFIED PERSON #1: Yeah, yeah, just like that.

ARNOLD: Again, it was this mix of ridiculousness along with things that were more serious. Violent-sounding social media posts were scary. And the couple doesn't think the community here realizes what they've been going through at the elections office.

UNIDENTIFIED PERSON #6: It felt like we were under attack - constant phone calls and people coming in and yelling at us. And we were reaching out to the sheriff's office. So they were walking us to and from the building. And any time we stepped out of the door, people were filming us. And at one point, as the sheriff was leading us outside, people were recording and laughing. Like, that's so funny that we're so scared that we had to have the sheriff walk us out. That was just really crazy.

JOHN SWEET: Absolutely inexcusable that that would happen.

ARNOLD: John Sweet is a Coos County commissioner. He's 83 years old, and he's a Republican who does not believe in the voter fraud conspiracy theories. He says it was hard to watch and hear about local people doing all this to county election workers.

SWEET: You know, it's a form of really a bit of mob activity, in a way. You know, the mob takes on a personality of its own that's probably different than the prevalent personality of individual members of the mob. I don't think it was unique to our county. It was a national thing.

ARNOLD: Everybody remembers the spectacle of the mob at the Capitol on January 6. But, of course, those people came from somewhere, and they went back home, where some of them outside of the national spotlight are carrying on the fight. And that's what's been happening here in Coos County. Rod Taylor runs a local surveying supply business. He was arrested for a curfew violation after the riot on January 6 in D.C.

ROD TAYLOR: I heeded an admonition from Gen. Michael Flynn to go home and make a difference there. And so we started a citizens group here in Coos County called Citizens Restoring Liberty. And we continue to meet weekly.

ARNOLD: The group is worried about supposed voter fraud and also government regulation of guns, masks and public schools. Its members have run as candidates for local government and school boards. Taylor himself ran for county commissioner. Here he is speaking ahead of last year's election on a local conservative talk radio show.

(SOUNDBITE OF ARCHIVED RECORDING)

TAYLOR: You know what? I'm proud to have been there on January 6.

UNIDENTIFIED PERSON #7: Right. Right.

TAYLOR: Yeah. It was a peaceable gathering on the 6. And, you know, people were happy, man.

ARNOLD: January 6 was quite violent. On the talk show, Taylor said he went into the building very briefly, though he says he did not participate in the violence. County officials say it was members of that Citizen's Restoring Liberty group who were camped in the hallways of the elections office. But despite their concerns about voter fraud, when the votes were counted, Rod Taylor narrowly won - a result he does not dispute. And he is now a Coos County commissioner.

TAYLOR: There's no window in here. Unfortunately, I wish I had a little bit of outside light, but...

ARNOLD: Taylor is showing me around his new county office. He's wearing a gun on his belt. He's got a scripture reading of the day on his desk, an American flag, a Trump won sign. We wanted to ask Taylor, does he think it's OK that local election workers here in his own county feel threatened just doing their jobs?

Did you realize that there are election workers here in the county who fear for their safety because of this?

TAYLOR: Yeah, of course I'm aware of that.

ARNOLD: But Taylor says he never threatened election workers himself, and he's not responsible for it.

TAYLOR: The fact of the matter is, when you've got a large group of people, it's sometimes like herding cats. And you cannot control what individuals do. So unfortunately, we did have some people who, I think, engaged election staff in unproductive ways that I would not have advocated for and I still don't condone.

JULIE BRECKE: My biggest worry is that people aren't going to want to do the job anymore.

ARNOLD: Over at the elections office, Julie Brecke is the new county clerk. She's trying to figure out how to avoid a repeat of last year in the upcoming presidential race. Already, one election worker has resigned.

BRECKE: It's an important job, and the people that work in this office take it very seriously. And they like their job. And if they're harassed constantly and made to look like villains, then eventually that weighs on people. I don't want to lose good people over harassment based on misinformation.

ARNOLD: For their part, law enforcement officials say it can be difficult to intervene.

(SOUNDBITE OF ARCHIVED RECORDING)

UNIDENTIFIED PERSON #1: 911. What's your emergency?

UNIDENTIFIED PERSON #8: This is Coos County with a transfer. This is the...

ARNOLD: The election worker who says he was chased while collecting ballots says he was told by police that since no officers saw this person driving erratically, there was nothing they could do.

(SOUNDBITE OF ARCHIVED RECORDING)

UNIDENTIFIED PERSON #1: OK.

UNIDENTIFIED PERSON #2: They have tried to run me off the road.

UNIDENTIFIED PERSON #1: Yeah.

UNIDENTIFIED PERSON #2: I'm a little scared.

UNIDENTIFIED PERSON #1: OK.

ARNOLD: The county sheriff, Gabe Fabrizio, says there were also complaints from voters who felt harassed or threatened at drop boxes. But he says nothing rose to the level that law enforcement decided that they could do much about.

GABE FABRIZIO: We want to make sure that everybody's First Amendment rights, their freedom of speech, is protected. So threats we take definitely seriously, and we'll go investigate them. And - but at the same time, you got to balance that off of people can say whatever they want.

ARNOLD: Around the country, people are trying to find solutions. Some states are passing laws to try to help. Right now Donald Trump, the election denialist in chief, is the GOP frontrunner in the next presidential election, but that's more than a year away. So state, federal and local governments do have time to try to come up with ways to lower the temperature and keep election workers safe if they don't wait till the last minute. Chris Arnold, NPR News.

(SOUNDBITE OF THIRD COAST PERCUSSION'S "AGUAS DA AMAZONIA: NO. 1, MADEIRA RIVER")

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