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

BLACK VOTERS MATTER FUND, MEGAN GORDON and PENELOPE REID, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BRAD RAFFENSPERGER, in his official capacity as Secretary of State of Georgia; DEKALB COUNTY BOARD OF REGISTRATION & ELECTIONS; ANTHONY LEWIS, SUSAN MOTTER, DELE LOWMAN SMITH, SAMUEL E. TILLMAN, and BAOKY N. VU, in their official capacities as Members of the DeKalb County Board of Registration & Elections; and ERICA HAMILTON, in her official capacity as Director of Voter Registration and Elections, and all others similarly situated,

Defendants.

Civil Action No.: 20-cv-1489-AT

<u>PLAINTIFFS' MOTION FOR CLASS CERTIFICATION</u>

Plaintiffs move for certification of the proposed classes listed below:

(1) A defendant class, pursuant to Rule 23(b)(1)(A) or (b)(1)(B), of "all Georgia boards of registrars, their members, their election directors, county registrars, and municipal absentee ballot clerks," represented by Defendants DeKalb Board of Registration & Elections, Anthony Lewis, Susan Motter, Dele Lowman Smith, Samuel E. Tillman, Baoky N. Vu, and Erica Hamilton,[1] and their counsel, with respect to all of Plaintiffs' claims (both facial and as-applied);

(2) A plaintiff class, pursuant to Rule 23(b)(2), (b)(1)(A), or (b)(1)(B), of "all registered Georgia voters," represented by Plaintiffs Megan Gordon and Penelope Reid and Plaintiffs' counsel, with respect to Plaintiffs' facial claims, and with respect to Plaintiffs' as-applied claims during the pandemic;

(3) A plaintiff subclass, pursuant to Rule 23(b)(2), (b)(1)(A), or (b)(1)(B), of "all registered Georgia voters who satisfy one of the COVID-19 risk factors identified by the Center for Disease Control ("CDC")," *see*

[1] The law permits for each county to designate a person or entity, which handles, among other things, registration and absentee voting, O.C.G.A. §§ 21-2-212, 21-2-384. This designee can be a "board of registrars" or "county registrar." *See id.* This brief uses the term "board of registrars" and their "members" to include each of these analogous entities and persons. In addition, the law requires municipalities to appoint an "absentee ballot clerk" with the same responsibilities as county registrars. O.C.G.A. § 21-2-380.1. The law provides separately for an "election superintendent" or "board of elections" which handles, among other things, Election Day voting and not absentee voting. *See* O.C.G.A. §§ 21-2-70; 21-2-40(a). For efficiency, many counties like DeKalb merge these entities into a "Board of Registration & Elections" or some other variant of that name, as state law allows, *see* O.C.G.A. § 21-2-40(b), so the term "board of registrars" used here includes such combined entities. In addition, counties have a top employee in charge of these operations which also go by various titles, and in DeKalb, that is Defendant Erica Hamilton, the Director of Voter Registration and Elections. The term "election director" used here refers to the analogous employee in other counties.

Exhibit E, represented by Plaintiff Reid and Plaintiffs' counsel, with respect to both of Plaintiffs' as-applied claims during the pandemic.

These classes should be certified for the reasons set forth in the accompanying brief. In short, class certification could help prevent hundreds if not thousands of separate lawsuits against 159 different counties, all raising identical legal issues that can otherwise be resolved in one stroke. It would also help ensure that separate conflicting adjudications on the same issue do not result in conflicting standards throughout Georgia.

Respectfully submitted this 31st day of May, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on the above mentioned date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system.

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IN THE UNITED STATES DISTRICT COURT
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BLACK VOTERS MATTER FUND, MEGAN GORDON and PENELOPE REID, on behalf of themselves and all others similarly situated, Plaintiffs, vs. BRAD RAFFENSPERGER, in his official capacity as Secretary of State of Georgia; DEKALB COUNTY BOARD OF REGISTRATION & ELECTIONS; ANTHONY LEWIS, SUSAN MOTTER, DELE LOWMAN SMITH, SAMUEL E. TILLMAN, and BAOKY N. VU, in their official capacities as Members of the DeKalb County Board of Registration & Elections; and ERICA HAMILTON, in her official capacity as Director of Voter Registration and Elections, and all others similarly situated, Defendants.	Civil Action No.: 20-cv-1489-AT

PLAINTIFFS' BRIEF IN SUPPORT
OF THEIR MOTION FOR CLASS CERTIFICATION

SUMMARY

Plaintiffs' move for certification of a defendant class of county elections officials, a plaintiff class of all Georgia registered voters, and a plaintiff subclass of registered voters who are particularly susceptible to COVID-19, as defined below.

Plaintiffs seek certification of a defendant class of county elections officials because the Defendant Secretary of State argues, erroneously and contrary to evidence, that the Secretary has nothing to do with the postage requirement so this lawsuit should only be brought against the counties. Doc. 97 at 9-11. If this Court were to agree with the Secretary's argument, and it should not, Doc. 98 at 9-11, then the only remaining defendant would be the DeKalb Defendants. Under those circumstances, Plaintiffs would potentially have to bring 158 identical lawsuits against 158 other counties to completely ensure that relief is provided statewide. A defendant class would prevent that scenario.

As for Plaintiffs' request for certification of a plaintiff class and subclass, this Court is well aware that Plaintiffs have maintained that certifying voter classes is not necessary to obtain effective relief. Doc. 1 ¶ 37. That is because broad relief can be granted even if the only basis for standing were the organizational standing of a nonprofit like Plaintiff Black Voters Matter Fund ("BVM"). *See, e.g.*, *Ga. Latino Alliance for Human Rights v. Governor of Ga.*, 691 F.3d 1250, 1259-60

(11th Cir. 2012); *Martin v. Kemp*, 341 F. Supp. 2d 1326 (N.D. Ga. 2018). Notably, Defendants have never disputed this. Nonetheless, some voting rights cases have sought broad relief solely on the basis of voter classes. *See, e.g.*, *Harman v. Forssenius*, 380 U.S. 528, 532-33 (1965); *Roe v. State of Ala.*, 68 F.3d 404 (11th Cir. 1995); *Frank v. Walker*, 819 F.3d 384, 385-87 (7th Cir. 2016). An appeals court might later rule, incorrectly, that only voter classes have standing to seek broad relief and that Plaintiffs should have sought certification. Plaintiffs prefer not to take that chance. Plaintiffs make their class certification request now in light of the 90-day deadline. N.D. Ga. Local Civil Rule 23.1(B).

First, Plaintiffs move to certify, under Rule 23(b)(1)(A) or (b)(1)(B), a defendant class represented by Defendants DeKalb Board of Registration & Elections, Anthony Lewis, Susan Motter, Dele Lowman Smith, Samuel E. Tillman, Baoky N. Vu, and Erica Hamilton (hereinafter "DeKalb"). The proposed defendant class is defined as "all Georgia boards of registrars, their members, their election directors, county registrars, and municipal absentee ballot clerks" (together, "BOR" or "county election officials").[1] DeKalb's counsel would be appointed as

[1] The law permits for each county to designate a person or entity, which handles, among other things, registration and absentee voting, O.C.G.A. §§ 21-2-212, 21-2-384. This designee can be a "board of registrars" or "county registrar." *See id.* In addition, the law requires municipalities to appoint an "absentee ballot clerk" with

defendant class counsel, and the class would pertain to all of Plaintiffs' claims (both facial and as-applied poll tax and *Anderson-Burdick* claims). *See* Part I.

Second, Plaintiffs move to certify, under Rule 23(b)(2), (b)(1)(A), or (b)(1)(B), a plaintiff class represented by Plaintiffs Megan Gordon and Penelope Reid (together, "Individual Plaintiffs") of all registered Georgia voters ("Voter Class"), all of whom are required to affix postage to vote by mail. Certifying this class would allow Plaintiffs' facial claims to be resolved in one stroke. Certifying this class would also allow Plaintiffs' as-applied claims during the COVID-19 crisis to be resolved in one stroke since everyone is at material risk of contracting (or spreading) the virus if they go outside. Plaintiffs' counsel would be appointed as plaintiff class counsel, and the class would pertain to both of Plaintiffs' facial claims, and both of Plaintiffs' as-applied claims during the pandemic. *See* Part II.

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the same responsibilities. O.C.G.A. § 21-2-380.1. The law provides separately for an "election superintendent" or "board of elections" which handles, among other things, Election Day voting. *See* O.C.G.A. §§ 21-2-70; 21-2-40(a). Many counties like DeKalb merge these entities into a "Board of Registration & Elections" or some other variant of that name, as state law allows, *see* O.C.G.A. § 21-2-40(b), so the term "board of registrars" used here includes such combined entities. The term "election director" refers to the top employee in charge of these operations which also go by various titles, and in DeKalb, that is Defendant Erica Hamilton, the Director of Voter Registration and Elections.

Third, Plaintiffs move to certify, under Rule 23(b)(2), (b)(1)(A), or (b)(1)(B), a plaintiff subclass ("Voter Subclass"), represented by Plaintiff Reid, of all registered Georgia voters who are particularly susceptible to COVID-19. Specifically, the proposed subclass is defined as "Georgia registered voters who satisfy one of the COVID-19 risk factors identified by the Center for Disease Control ("CDC")." *See* Exhibit E. As noted above, Plaintiffs' as-applied claims cover everyone in the Voter Class during the COVID-19 pandemic, but Plaintiffs propose this subclass should this Court believe that only some but not all voters are entitled to injunctive relief during the pandemic. Plaintiffs do not waive the right to seek modification of any subclass if the pandemic lifts during this litigation. *See, e.g.*, *Local 703, I.B. v. Regions Financial Corp.*, 762 F.3d 1248, 1260 n.8 (11th Cir. 2014) (classes can change with new circumstances). Plaintiffs' counsel would be appointed as counsel for the plaintiff subclass, and the subclass would pertain solely to Plaintiffs' as-applied poll tax and *Anderson-Burdick* claims during the pandemic. *See* Part III.

For the reasons below, each of these proposed classes satisfy the standards for class certification outlined in Rule 23 of the Federal Rules of Civil Procedure. Should this Court deem class certification necessary to grant any preliminary injunctive relief, this Court can grant class certification solely for preliminary

injunction purposes. *See, e.g.*, *Clean-Up '84 v. Heinrich*, 582 F. Supp. 125, 127 (M.D. Fla. 1984) (certifying class in voting case "for the narrow purpose of effectuating the preliminary injunction").[2] Classes certified now can also be decertified later if changed circumstances so warrant. Fed. R. Civ. P. 23(c)(1)(C).

ARGUMENT

I. THE BOR DEFENDANT CLASS QUALIFIES FOR CLASS CERTIFICATION

The proposed BOR Class consists of all Georgia county elections officials. Defendant classes of county election officials have been certified in election cases before, and the same is warranted here. *See e.g.*, *Nat'l Broadcasting Co., Inc. v. Cleland*, 697 F. Supp. 1204, 1216 (N.D. Ga. 1988) (certifying defendant class of 159 election superintendents throughout Georgia in polling place case); *Kane v. Fortson*, 369 F. Supp. 1342, 1343 (N.D. Ga. 1973) (certifying defendant class of "all members of Boards of Registrars throughout Georgia" in voter registration case for settlement purposes); *CBS Inc. v. Smith*, 681 F. Supp. 794, 801-02 (S.D. Fla. 1988) (certifying a "Defendant class of Supervisors of Elections for each of the 67 counties in Florida" in polling place case); *Harris v. Graddick*, 593 F. Supp.

[2] If that is the case, Plaintiffs request an expedited briefing schedule that would give Defendants at most 14 days to respond and Plaintiffs 7 days to file a reply.

128, 132, 137 (M.D. Ala. 1984) (certifying defendant class of election officials from each county responsible for appointment of poll workers in that county).

A. The BOR Class satisfies Rule 23(a)'s requirements

Rule 23(a) of the Federal Rules of Civil Procedure provides that the proposed class must satisfy the following criteria: (1) numerosity, in that the "class is so numerous that joinder of all members is impracticable"; (2) commonality, that "there are questions of law or fact common to the class"; (3) typicality, whether the proposed class representative's claims or defenses "are typical of the claims or defenses of the [proposed] class"; and (4) adequacy, that the "representative parties will fairly and adequately protect the interests of the [proposed] class."

Numerosity. The BOR Class is so numerous that joinder is impracticable. Here, it is impracticable to join county elections officials from 158 other counties dispersed throughout the state. *See, e.g.*, *Nat'l Broadcasting Co., Inc.*, 697 F. Supp. at 1216 (certifying class of 159 election superintendents partly on this basis).

Commonality. Plaintiffs' claims against all county elections officials raise the same legal question: Is the postage requirement an unconstitutional poll tax, or an unconstitutional burden on the right to vote under *Anderson-Burdick*? *See, e.g.*, *Nat'l Broadcasting Co.*, 697 F. Supp. at 1216 (certifying defendant class of elections officials because plaintiffs raise "one significant question of law" that "is

common to the entire defendant class”). Adjudicating this legal question in this case would resolve the constitutionality of the postage requirement in all 159 counties “in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011); *see, e.g.*, *Strawser v. Strange*, 307 F.R.D. 604, 612 (S.D. Ala. 2015) (“The question common to the entire Defendant Class is whether their enforcement of Alabama’s laws barring same-sex couples from marriage violates [the Constitution]. The resolution of this question will resolve the claims against all [] members of the class in one stroke.”). As discussed further *infra* Part II.A., the claims by different voters against different counties are identical for Plaintiffs’ facial claims, as well as for Plaintiffs’ as-applied claims during the pandemic.

Typicality. For similar reasons, the defenses of DeKalb will be typical of the defenses of the other county elections officials. The county elections officials “all operate under the same statutory framework.” *Strawser*, 307 F.R.D. at 613. Their common defenses “arise from the same course of events,” which is the postage requirement. *Id.*; *see also Wells v. HBO & Co.*, No. 1:87-CV-657-JTC, 1991 WL 131177, at *4 (N.D. Ga. Apr. 24, 1991) (typicality satisfied when claims “arise[] from the same events or course of conduct . . . and is based on the same legal theory”). Thus, the core defense raised by DeKalb would be the same as for any county’s BOR, namely that a postage requirement is not unconstitutional. *See*

Strawser, 307 F.R.D. at 613 (defendant class satisfied typicality where "each class member may make the same legal arguments" advanced by defendant representatives "to defend against the Plaintiffs' allegations."); *Harris*, 593 F. Supp. at 137 ("the claim of diminished black voter access to the polls due to underrepresentation of black poll officials is based on state-wide circumstances. Thus, any defenses to the claim would be state-wide, and would be common and typical for all members of the [defendant] class" of elections officials).

Adequacy. DeKalb will fairly and adequately protect the interests of the BOR Class. Adequacy boils down to two inquiries: "(1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action." *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003) (citation omitted). There is no substantial conflict between DeKalb and the elections officials of other counties, because all have "the same duties and responsibilities as all other county [registrars]" under state law. *Nat'l Broadcasting Co.*, 697 F. Supp. at 1217.

DeKalb's counsel is also more than "adequate." The office has extensive experience defending the county in voting rights cases brought in federal court, including before the Eleventh Circuit. *See, e.g.*, *Swann v. Secretary, Georgia*, 668 F.3d 1285 (11th Cir. 2012); *Scott v. Taylor*, 405 F.3d 1251 (11th Cir. 2005).

Indeed, they successfully defended the county in a voting rights suit earlier this year. *See Georgia Shift v. Gwinnett Cnty.*, No. 1:19-cv-01135, 2020 WL 864938 (N.D. Ga. Feb. 12, 2020). They also have greater resources than most other counties because they represent one of the most populous counties in Georgia.

For the above reasons, the BOR Class satisfies the Rule 23(a) requirements.

B. The BOR Class qualifies as a Rule 23(b)(1)(A) or (b)(1)(B) class

After satisfying Rule 23(a)'s requirements, the class must also fall into one of the following types of class actions set out in Rule 23(b). As discussed below, the defendant class qualifies as a Rule 23(b)(1)(A) or (b)(1)(B) class.

Rule 23(b)(1)(A) class. A Rule 23(b)(1)(A) defendant class is certifiable when "prosecuting separate actions . . . against individual class members would create a risk of" "inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class." As the Supreme Court has explained, (b)(1)(A) certification is generally suitable "in cases where the party is obliged by law to treat the members of the class alike (a utility acting toward customers; a government imposing a tax), or where the party must treat all alike as a matter of practical necessity." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). In addition, such a class only applies to cases, like this one, that seeks declaratory and injunctive relief and not

compensatory damages. *See In re Dennis Greenman Secs. Litig.*, 829 F.2d 1539, 1545 (11th Cir. 1987). Here, separate adjudications as to different counties creates a risk of incompatible standards that would apply to different voters (i.e., members of the Voter Class or Voter Subclass) across the state, as well as to BVM.

First, separate adjudications against different counties create a risk that conflicting court orders would require the Secretary to take conflicting actions that impact all 159 counties, including those not parties to any litigation. For instance, here Plaintiffs are requesting an injunction that would require the Secretary to issue guidance to all counties informing them that the Constitution prohibits postage requirements.[3] The counties, in turn, generally follow the Secretary's guidance, Doc. 2 at 2; Doc. 88 ¶¶ 19, 53, a proposition no Defendant has disputed. Because the Secretary is a likely party in any lawsuit challenging the postage requirement, multiple separate lawsuits against different counties could require the Secretary to issue conflicting guidance which all counties will struggle to follow.

Second, even if courts do not require the Secretary to do anything and only the county defendant is enjoined from imposing a postage requirement, the Secretary is still likely to issue uniform guidance to all counties in response to an

[3] Plaintiffs do not waive the right to seek different or additional relief from the Secretary should the evidence revealed in discovery compel Plaintiffs to do so.

adjudication against one county. The State Election Board, of which the Secretary is the Chair, has a general legal obligation to ensure uniformity in election practices throughout the state. *See* Ga. Op. Att'y Gen. No. 05-3, 2005 WL 897337, at *4-6 (Apr. 15, 2005); O.C.G.A. § 21-2-31(1). Issuing uniform guidance also serves the Secretary's interest in minimizing confusion for both voters and elections officials. *See Green Party of Ga. v. Kemp*, 171 F. Supp. 3d 1340, 1365 (N.D. Ga. 2016) (the "Supreme Court and the Eleventh Circuit have consistently recognized that limiting voter confusion is an important state interest"); *cf., e.g.*, *Kane*, 369 F. Supp. at 1343 (Secretary and Dougherty County election officials agreeing to defendant class certification and statewide relief after a temporary restraining order was entered only as to a single voter). If a lawsuit against one county succeeds while a different lawsuit against another county fails, the need for uniformity would trap the Secretary into a bind, potentially resulting in incompatible standards throughout the state.

Furthermore, the Secretary has already issued guidance for postage and other absentee ballot issues, *see* Docs. 2-4; 54-3,[4] so "as a matter of practical necessity," *Amchem*, 521 U.S. at 614, the Secretary will have to say *something* about whether

[4] "[S]ometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question." *Wal-Mart*, 564 U.S. at 350.

a ruling striking down the postage requirement in one county means that prior guidance to all counties is wrong. Adding to the pressure, many non-party counties would likely seek guidance from the Secretary on whether their postage requirement comports with the Constitution when they hear about a court ruling against another county. Such counties do not want to be sued and they want a ready answer when their voters ask them the same question.

For these reasons, this Court should certify the BOR Class pursuant to Rule 23(b)(1)(A). *See, e.g.*, *Nat'l Broadcasting Co.*, 697 F. Supp. at 1217 (certifying (b)(1)(A) class, concluding, "There are 159 county [boards of registrars] in Georgia and prosecution of separate actions against individual members of the defendant class would create a serious risk of inconsistent or varied adjudications with respect to individual members of the class and would establish incompatible standards of conduct for plaintiffs."); *CBS Inc.*, 681 F. Supp. at 802 (certifying class of 67 county elections officials under (b)(1)(A)).

Rule 23(b)(1)(B) class. A Rule 23(b)(1)(B) defendant class is certifiable when "prosecuting separate actions . . . against individual class members would create a risk of" "adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of [non-party class members] or substantially impair or impede their ability to protect their interests."

There is a risk that separate adjudications against different counties would, "as a practical matter, . . . be dispositive" of the non-party counties' interests because, as noted above, the Secretary is generally obliged, at least "as a practical matter," to issue uniform guidance to all counties. *See Eslava v. Gulf Telephone Co.*, No. 04-00297-KD-B, 2007 WL 2298222, at *6 (S.D. Ala. Aug. 7, 2007) (even if relief as to one member does not "technically conclud[e] the other members" of the class, it "might do so as a practical matter" under Rule 23(b)(1)(B) (citing decisions quoting Rule 23 advisory note)). Thus, "were this Court to find that the [Constitution] requires [DeKalb] to act in a certain fashion," there is a risk that other counties would be obligated "to act in a similar fashion towards all [voters]—the quintessential (b)(1)(B) scenario." *Z.D. ex rel. J.D. v. Group Health Co-op*, No. C11-1119RSL, 2012 WL 1977962, at *7 (W.D. Wash. June 1, 2012).

The BOR Class may also be certified as a Rule 23(b)(1)(B) class for the independent reason that "adjudications with respect to individual class members [would], as a practical matter . . . substantially impair or impede their ability to protect their interests." Fed. R. Civ. P. 23(b)(1)(B). If evidence or statements from the Secretary are used in this litigation resulting in a judgment against DeKalb, there is a "risk" that the same evidence or statements from the Secretary could be used to prejudice the counties in any separate postage-related litigation,

substantially impairing or impeding their ability to protect their interests. *See Resolution Trust Corp. v. KMPG Peat Marwick*, Civ. A. No. 92-1373, 1992 WL 245705, at *2 (E.D. Pa. Sept. 23, 1992) (certifying (b)(1)(B) class because harmful statements made in litigation for one defendant could be used against other class members in separate litigation). An injunction against one county may also presumptively tilt the public interest factor in favor of enjoining the postage requirement in other counties in separate litigation. *Cf.* Doc. 83 at 8 (need to avoid "a measure of disparity in postage relief as a practical matter, [which] would touch on the Court's weighing of the public interest factor").

* * *

For these reasons, this Court should certify the BOR Class under Rule 23(b)(1)(A) or (b)(1)(B), appointing DeKalb as class representatives and their counsel as class counsel with respect to all of Plaintiffs' claims. Doing so would allow for a single definitive ruling to resolve, in one stroke, the postage requirement issue for all counties.

II. THE VOTER CLASS, CONSISTING OF ALL VOTERS, QUALIFIES FOR CLASS CERTIFICATION

The "Voter Class," defined as "all registered Georgia voters" and represented by the Individual Plaintiffs, satisfies the requirements of Rule 23(a)

and qualifies for Rule 23(b)(2), (b)(1)(A), or (b)(1)(B) class certification. In sum, certifying the Voter Class could resolve, in one stroke, the facial poll tax and *Anderson-Burdick* claims of all Georgia registered voters without millions of separate lawsuits. The Voter Class could also resolve Plaintiffs' as-applied claims in one stroke during the COVID-19 pandemic, since all voters are currently subject to the same risks of contracting COVID-19 when leaving their home to vote or buy postage. *See* Doc. 84 at 3, 6, 17-18.

A. The Voter Class satisfies Rule 23(a)'s requirements

The Voter Class satisfies each of the Rule 23(a) requirements.

Numerosity. The Voter Class is so numerous that joinder is impracticable. It is impracticable to join nearly 7 million registered Georgia voters. *See* Exhibit A. *See Cox v. Amer. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986) (more than 40 members generally sufficient to establish numerosity).

Commonality. The Voter Class raises common legal and factual questions that, if answered, would resolve this claim on behalf of every class member "in one stroke." *Wal-Mart*, 564 U.S. at 350. Plaintiffs' claims do not "rise and fall on the specific factual and legal circumstances of . . . individual [voters]." *Cox v. Stone Ridge at Vinings, LLC*, 1:12-CV-2633-AT, 2014 WL 12663763, at *4 (N.D. Ga. Sept. 30, 2014). Instead, Plaintiffs' claims rely on the following common facts.

Everyone in the Voter Class must fulfill Defendants' requirement for voters to affix postage when voting-by-mail. Everyone must spend money when purchasing postage. Everyone in the Voter Class must have ballots dropped off in person, or vote in person, to avoid using postage. And everyone is subject to a material risk of contracting the COVID-19 virus if they go outside, in contravention of prevailing public health guidance that people confine themselves and practice social distancing.

Given these common facts, the legal questions are also the same. First, certifying a Voter Class allows this court to resolve both of Plaintiffs' facial claims in one stroke. Plaintiffs' facial *Anderson-Burdick* claim argues that requiring everyone in the Voter Class to use postage when voting by mail is never justified by the government's naked desire to save money, regardless of an individual voter's circumstances. Doc. 84 at 17. Plaintiffs' facial poll tax claim asserts that forcing anyone in the Voter Class to choose between buying postage and voting in-person is unconstitutional, regardless of the wealth of any one voter. *Id.* at 4-6.

Second, certifying the Voter Class also allows this court to resolve Plaintiffs' as-applied claims in one stroke during the COVID-19 pandemic. Plaintiffs' as-applied *Anderson-Burdick* claim focuses on voters who cannot leave their home with reasonable effort, either to vote or get postage. During the

pandemic, that currently includes everyone in the Voter Class because everyone is at material risk of contracting COVID-19 when they leave their home. Doc. 84 at 17. All members raise the same argument that raw financial interests do not justify exposing voters to COVID-19. *Id.* at 19-20; *see Frank v. Walker*, 819 F.3d 384, 385-87 (7th Cir. 2016). Similarly, everyone in the Voter Class raises the same as-applied poll tax abridgment claim, arguing that forcing any voter to expose themselves to COVID-19 if they want to avoid the poll tax imposes a requirement that is at least “material.” *Harman v. Forssenius*, 380 U.S. 528, 542 (1965).

Typicality. For similar reasons, the Individual Plaintiffs’ claims are typical of the Voter Class, including their facial claims as well as their as-applied claims during this pandemic. *See Hudson v. Delta Air lines, Inc.*, 90 F.3d 451, 456 (11th Cir. 1996) (“Although the issues of commonality and typicality are separate inquiries, proof of each also ‘tend[s] to merge.’” (citation omitted)). Like every other Georgia registered voter, the Individual Plaintiffs are required to affix postage to vote-by-mail, and they expose themselves to the COVID-19 virus if they go outside. Thus, the Individual Plaintiffs’ claims are “typical” because “the claims . . . of the class and the class representative[s] arise from the same event or pattern or practice and are based on the same legal theory.” *Williams v. Mohawk Indus., Inc.*, 568 f.3d 1350, 1357 (11th Cir. 2009).

Adequacy. The Individual Plaintiffs will fairly and adequately protect the interests of the Voter Class.[5] There is no substantial conflict of interest because the Individual Plaintiffs are pursuing the same remedies for themselves that they are seeking for the class. In other words, this is not a damages situation where class representatives may be incentivized to ask for a bigger slice of the pie. *See Drayton v. W. Auto Supply Co.*, No. 01-10415, 2002 WL 32508918, at *6 (11th Cir. Mar. 11, 2002). And as the attached Exhibits B to D demonstrate, Plaintiffs' counsel are experienced voting rights attorneys.

For the above reasons, the Voter Class satisfies the Rule 23(a) requirements.

B. The Voter Class qualifies as a Rule 23(b)(2), (b)(1)(A), or (b)(1)(B) class

Rule 23(b)(2) class. A class is certified under Rule 23(b)(2) when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." As the Supreme Court has recognized, "'[c]ivil rights cases against parties charged with unlawful, class-based

[5] Adequacy also examines whether the named Plaintiffs' have similar claims to other class members, but that aspect of adequacy overlaps with commonality and typicality, *see Wal-Mart*, 564 U.S. at 349 n.5, which have been established here.

discrimination are prime examples' of what (b)(2) is meant to capture." *Wal-Mart*, 564 U.S. at 361 (quoting *Amchem*, 521 U.S. at 614). This is one of those cases.

Specifically, the Voter Class may be certified as a Rule 23(b)(2) class action because Defendants have "acted . . . on grounds that apply generally to the class" by imposing the postage requirement on all voters. Alternatively, Defendants have "refused to act on grounds that apply generally to the class" by refusing to provide prepaid postage envelopes for all voters.[6] Thus, all registered Georgia voters are unconstitutionally forced to choose between voting in-person or buying postage to vote by mail.

Because everyone in the Voter Class is subject to the postage requirement, "final injunctive relief" or "corresponding declaratory relief is appropriate respecting the class as a whole. *See, e.g.*, *Strawser*, 307 F.R.D. at 614 ("[a]ll Plaintiff Class members have been harmed" in the same way, and "their injury can be properly addressed by class-wide injunctive relief"). A "single injunction or

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[6] DeKalb, of course, has not imposed a postage requirement on voters outside DeKalb. But the defendant class members have acted or refused to act with all the Voter Class members in their respective counties. *See generally, e.g.*, *Strawser*, 307 F.R.D. at 614-15 (simultaneously certifying plaintiff class and defendant class across the state where statewide practice was enacted by all counties).

declaratory judgment" enjoining the imposition of a postage requirement "would provide relief to each member of the class." *Wal-Mart*, 564 U.S. at 361.

For all these reasons, (b)(2) certification of all registered voters is warranted, just as it has been done in other voting rights cases. *See, e.g.*, *Dillard v. Crewnshaw Cnty.*, 640 F. Supp. 1347, 1373 (M.D. Ala. 1986) (certifying (b)(2) class of black voters in vote dilution case because county election officials "have acted on grounds generally applicable to all black voters"); *Lightbourn v. Cnty. of El Paso, Tex.*, 118 F.3d 421, 426 (5th Cir. 1997) (affirming certification of (b)(2) class of disabled voters because the Secretary of State "acted or refused to act" "on grounds generally applicable to the class" in failing to accommodate them); *Griffin v. Burns*, 570 F.2d 1065, 1074 (1st Cir. 1978) (affirming certification of (b)(2) class of absentee voters because all of their ballots were invalidated).

Rule 23(b)(1)(A) class. The Voter Class may also be certified as a Rule 23(b)(1)(A) class because "prosecuting separate actions by . . . individual class members would create a risk of[] inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class." Fed. R. Civ. P. 23(b)(1)(A). If one DeKalb voter brought a successful lawsuit while another DeKalb voter's lawsuit fails, DeKalb would face incompatible standards of conduct with respect to its

voters. Similarly, if one voter brought a successful lawsuit against the Secretary while another's lawsuit fails, the Secretary would face incompatible standards of conduct as to different voters. In addition, for the reasons set forth *supra* Part I.B., the Secretary's conflicting treatment towards different voters will likely spill over into conflicting standards across 159 different counties who look to the Secretary for cues and guidance on what to do. In sum, a "class-wide ruling by this Court would definitively determine the issues as to all of the Plaintiffs' claims" statewide. *See Strawser*, 307 F.R.D. at 614 (certifying (b)(1)(A) plaintiff class).

Rule 23(b)(1)(B) class. The Voter Class may also be certified as a Rule 23(b)(1)(B) class because, for the same reasons set forth *supra* Part I.B., separate actions create a "risk" that "adjudications with respect to" one voter would, "as a practical matter, [] be dispositive of the interests" of other voters.

* * *

For these reasons, this Court should certify the Voter Class, appointing the Individual Plaintiffs as class representatives and Plaintiffs' counsel as class counsel with respect to all of Plaintiffs' claims. This would allow for a single ruling to resolve, in one stroke, Plaintiffs' facial claims, as well as Plaintiffs' as-applied claims during the pandemic.

III. THE VOTER SUBCLASS, CONSISTING CURRENTLY OF HIGH-RISK VOTERS, QUALIFIES FOR CLASS CERTIFICATION

As discussed above, certifying the Voter Class should be sufficient to resolve not only Plaintiffs' facial claims, but also Plaintiffs' as-applied claims during the pandemic since all voters are at material risk of contracting COVID-19 if they go outside. However, if this Court were to rule that only voters who are particularly susceptible to COVID-19 should obtain injunctive relief during the pandemic under a narrowed version of Plaintiffs' as-applied claims, Plaintiffs propose a Voter Subclass of all "Georgia registered voters who satisfy at least one of the COVID-19 risk factors identified by the Center for Disease Control ("CDC")." *See* Exhibit E (including anyone 65 years and older, living in a nursing home, or with one of the underlying medical conditions listed on the website).

Certification would be proper pursuant to Rule 23(b)(2), (b)(1)(A), or (b)(1)(B), with Plaintiff Reid as the subclass representative and Plaintiffs' counsel as class counsel, with respect to Plaintiffs' as-applied claims.[7]

[7] If the pandemic lifts while this lawsuit is pending, Plaintiffs' as-applied claims would likely change, and this subclass definition would likely change to capture the as-applied population. *See Local 703, I.B. v. Regions Financial Corp.*, 762 F.3d 1248, 1260 n.8 (11th Cir. 2014) ("if the circumstances have changed since the District Court's [prior] certification order . . . , the District Court may revisit its initial certification decision"); Fed. R. Civ. P. 23(c)(1)(C); Doc. 88 ¶ 51. For

A. The Voter Subclass satisfies Rule 23(a)'s requirements

Numerosity. Numerosity is satisfied because over tens of thousands of registered Georgia voters are high-risk. In DeKalb County alone, there are 87,914 registered voters age 65 or older.[8]

Commonality. Commonality is satisfied, because if Plaintiffs' as-applied claims were narrowed to encompass only those particularly susceptible to COVID-19, then each member of the Voter Subclass would have identical as-applied claims that can be resolved in one stroke during the pandemic. Their common as-applied *Anderson-Burdick* claim would be that any voter at high-risk carries a potentially lethal burden when they leave their home to vote or buy postage during the pandemic, and that such deadly burdens are not justified by the government's mere budgetary preferences. The as-applied poll tax claim would be similar, arguing that forcing high-risk voters to expose themselves to COVID-19 if they

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instance, the subclass could be modified to encompass those like Plaintiff Reid who have difficulty leaving their home even absent the pandemic.

[8] This is based on a public Excel file on the Secretary's website, called "Active Voters by Race and Gender by Age Group (By County with Statewide Totals)." *See* https://sos.ga.gov/index.php/Elections/voter_registration_statistics. This number is based on the file downloaded on May 30, 2020.

want to avoid the poll tax imposes a requirement that is "material" (which is an understatement). *Harman v. Forssenius*, 380 U.S. 528, 542 (1965).

Typicality and Adequacy. Plaintiff Reid's claims are typical of the subclass. She is 80 years old, Doc. 38, which satisfies at least one of the risk factors identified by the CDC (65 years or older). She and Plaintiffs' counsel are adequate for the reasons discussed *supra* Part II.A.

B. The Voter Subclass qualifies as a Rule 23(b)(2), (b)(1)(A), or (b)(1)(B) class

The Voter Subclass can be certified under Rule 23(b)(2), (b)(1)(A), or (b)(1)(B) for largely the same reasons set forth *supra* Part II.B. The Voter Subclass can be certified as a (b)(2) class because Defendants have acted or refused to act on grounds generally applicable to the Voter Subclass. Namely, they are not making exceptions to the postage requirement for some subclass voters but not other subclass voters, and so any injunctive and declaratory relief should include all members of the Voter Subclass under a narrowed as-applied claim. Certification of the Voter Subclass under (b)(1)(A) and (b)(1)(B) is appropriate, because for the reasons set forth *supra* Part I.B. and II.B., Defendants must treat all voters alike as a legal or practical matter. Different rulings resulting from separate lawsuits by different Voter Subclass members would create a "risk" that different Voter Subclass members, whether or not they file their own suit, would invariably be

subject to different standards applied by the Secretary and county elections officials across the state.

CONCLUSION

For the above reasons, Plaintiffs' motion for class certification should be granted. Doing so will help foreclose the possibility of hundreds if not thousands of lawsuits raising identical claims against 159 different counties.

Respectfully submitted this 31st day of May, 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to N.D. Ga. Local Civil Rule 7.1(D), I hereby certify that the foregoing has been prepared in compliance with N.D. Ga. Local Civil Rule 5.1(C) in Times New Roman 14-point typeface.

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CERTIFICATE OF SERVICE

I hereby certify that on the above mentioned date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system.

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HISTORICAL VOTER REGISTRATION STATISTICS
STATE OF GEORIGA
1998 TO PRESENT

Election		
1998 Primary Election – July 21	Active	3,817,393
	Inactive	295,830
	TOTAL REGISTERED	4,113,223
1998 General Election – November 3	Active	3,910,740
	Inactive	281,967
	TOTAL REGISTERED	4,192,707
2000 Presidential Preference Primary Election – March 7	Active	3,442,455
	Inactive	940,859
	TOTAL REGISTERED	4,383,314
2000 General Primary Election – July 18	Active	3,592,778
	Inactive	881,908
	TOTAL REGISTERED	4,474,686
2000 General Election – November 7	Active	3,856,676
	Inactive	791,534
	TOTAL REGISTERED	4,648,210
2002 General Primary Election – August 20	Active	3,650,590
	Inactive	791,534
	TOTAL REGISTERED	4,442,124
2002 General Primary Election Runoff – September 10	Active	3,650,590
	Inactive	1,016,965
	TOTAL REGISTERED	4,667,555
2002 General Election – November 7	Active	3,758,718
	Inactive	967,365
	TOTAL REGISTERED	4,726,083
2004 Presidential Preference Primary Election – March 2	Active	3,943,161
	Inactive	642,261
	TOTAL REGISTERED	4,585,422
2004 General Primary Election – July 30	Active	3,881,716
	Inactive	816,291
	TOTAL REGISTERED	4,698,007
2004 General Election – November 2	Active	4,248,802
	Inactive	703,153
	TOTAL REGISTERED	4,951,955

Election		
2006 General Primary Election – July 18	Active	4,265,481
	Inactive	725,784
	TOTAL REGISTERED	4,991,265
2006 General Election – November 7	Active	4,407,118
	Inactive	724,914
	TOTAL REGISTERED	5,132,032
2008 Presidential Preference Primary Election – February 5	Active	4,482,551
	Inactive	754,930
	TOTAL REGISTERED	5,237,481
2008 General Primary Election – July 15	Active	4,741,498
	Inactive	669,469
	TOTAL REGISTERED	5,410,967
2008 General Election – November 4	Active	5,184,912
	Inactive	570,838
	TOTAL REGISTERED	5,755,750
2010 General Primary Election – July 20	Active	4,932,914
	Inactive	792,970
	TOTAL REGISTERED	5,725,884
2010 General Election – November 2	Active	5,033,307
	Inactive	762,229
	TOTAL REGISTERED	5,795,536
2012 General Primary Election – July 31	Active	5,153,758
	Inactive	752,067
	TOTAL REGISTERED	5,905,825
2012 General Election – November 6	Active	5,353,013
	Inactive	713,948
	TOTAL REGISTERED	6,066,961
2014 General Primary Election – May 20	Active	5,047,420
	Inactive	898,235
	TOTAL REGISTERED	5,945,655
2014 General Election – November 4	Active	5,168,664
	Inactive	867,827
	TOTAL REGISTERED	6,036,491

Election		
2016 Presidential Preference Primary Election – March 1	Active	4,707,512
	Inactive	1,558,611
	TOTAL REGISTERED	6,266,123
2016 General Primary Election – May 24	Active	4,914,726
	Inactive	1,434,877
	TOTAL REGISTERED	6,349,603
2016 General Election – November 8	Active	5,443,046
	Inactive	1,194,893
	TOTAL REGISTERED	6,637,939
2018 General Primary Election – May 22	Active	6,143,229
	Inactive	551,212
	TOTAL REGISTERED	6,694,441
2018 General Election – November 6	Active	6,428,581
	Inactive	507,235
	TOTAL REGISTERED	6,935,816

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

BLACK VOTERS MATTER FUND, et al., Plaintiffs, vs. BRAD RAFFENSPERGER, in his official capacity as Secretary of State of Georgia, et al., Defendants.	Civil Action No.: 20-cv-1489-AT

DECLARATION OF SEAN J. YOUNG

I, Sean J. Young, make the following declaration under 28 U.S.C. § 1746.

1. I am the Legal Director of the ACLU of Georgia, where I have worked since 2017, and focus predominantly on voting rights. I was previously a Staff Attorney with the ACLU Voting Rights Project, in New York, from 2013 to 2017, where I focused exclusively on voting rights.

2. I obtained a Bachelor of Science (economics) and Bachelor of Arts (computer science) degree from Duke University in 2002, and a Juris Doctor from Yale Law School in 2006.

3. I have been admitted to the Georgia bar (Georgia Superior Courts and all other lower courts) (2017); the Georgia Court of Appeals (2017); and the Supreme Court of Georgia (2017). I was first admitted to the practice of law in the State of New York in 2007. I have been continuously engaged in the practice of law on a full-time basis since 2007.

4. I am admitted to the following federal courts: U.S. District Courts for the Middle District of Georgia (2017); Southern District of Georgia (2018); and Northern District of Georgia (2017); U.S. Courts of Appeals for the Eleventh Circuit (2017), and the United States Supreme Court (2014). In addition, I am admitted to the First (2016), Sixth (2014), and Seventh (2013) Circuits, as well as the Southern District of New York (2009); Eastern District of New York (2009); and Eastern District of Wisconsin (2013).

5. My work history is as follows: From 2006 to 2007, I was a litigation associate with Hughes, Hubbard & Reed LLP. From 2007 to 2009, I worked as the law clerk for the Honorable Laura Taylor Swain in the U.S. District Court for the Southern District of New York. From 2009 to 2012, I was a litigation associate with Skadden, Arps, Meagher & Flom LLP. For five months from February to July 2012, I worked as a volunteer attorney for the American Civil Liberties Union ("ACLU"). From August 2012 to 2013, I worked as a law clerk for the Honorable Ann Claire Williams in the U.S. Court of Appeals for the Seventh Circuit.

6. From 2013 to 2017, I was a staff attorney (then senior staff attorney) for the ACLU Voting Rights Project. At the ACLU, I litigated exclusively voting rights cases. My work includes being lead counsel and arguing in the second and third appeals before the Seventh Circuit in a challenge to Wisconsin's voter ID law. The second appeal was successful and resulted in *Frank v. Walker*, 819 F.3d 384 (7th Cir. 2016), which established for the first time that voters with difficulty obtaining ID may be exempt from a voter ID law notwithstanding the state's compelling interest in preventing voter fraud; *see also* 835 F.3d 649 (7th Cir. 2016) (en banc) (reaffirming this principle).

7. I was also lead counsel in *Ohio NAACP v. Husted*, 768 F.3d 524 (6th Cir. 2014) (holding that Ohio's early voting cutbacks violated Section 2 of the Voting Rights Act and the Fourteenth Amendment), *vacated on other grounds*, setting forth a two-part Section 2 vote denial test later adopted by the Fourth Circuit in *League of Women Voters of N.C. v. N.C.*, 769 F.3d 224, 240 (4th Cir. 2014) (citing *Husted*, striking down early voting cutbacks among other restrictions), and *Veasey v. Abbott*, 830 F.3d 216, 244 (5th Cir. 2016) (en banc) (citing *League of Women Voters of N.C.* and *Husted*, striking down Texas's voter ID law).

8. In addition, on behalf of the Campaign Legal Center, the ACLU, and other organizations, I was a lead drafter of the first half of an amicus brief

submitted to the U.S. Supreme Court in *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652 (2015). On behalf of the ACLU and ACLU of Texas, I was the lead drafter of a U.S. Supreme Court amicus brief in *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016). I was also the lead drafter of a portion of an opposition to certiorari brief submitted to the U.S. Supreme Court, in *Husted v. A. Phillip Randolph Institute*, 138 S. Ct. 1833 (2018).

7. From 2017 to the present, I have been the legal director of the ACLU of Georgia, where I have predominantly focused on voting rights. I was lead counsel in the following Georgia voting rights cases: *ACLU of Georgia v. Fulton County Board of Registration & Elections*, 2017CV292939 (Fulton Cnty. Super. Ct.) (mandamus action blocking illegal polling place closures due to failure to comply with notice laws); *Hopkins v. Kemp*, 2017CV293325 (Fulton Cnty. Super. Ct.) (prevented illegal removal of up to 160,000 voters from active voter rolls); *Palacios v. Kemp*, 2018CV305433 (Fulton Cnty. Super. Ct.) (case on behalf of newly-naturalized U.S. citizen barred from seeking state office), which included a request for leave to appeal filed with the Georgia Supreme Court; *Georgia Muslim Voter Project v. Kemp*, 918 F.3d 1262 (11th Cir. 2019) (denying stay of preliminary injunction enjoining operation of unconstitutional signature-match law by requiring Secretary to issue guidance to counties). I was local counsel and co-counsel in *Georgia Shift v. Gwinnett Cnty*, 19-cv-1135 (N.D.Ga.) (lawsuit against

four metro counties for failure to run proper election), and I am co-counsel in *Whitest v. Crisp Cnty. Bd. of Educ.*, 17-cv-109 (M.D.Ga.) (challenging board of education redistricting plan as violation of Voting Rights Act); *Wright v. Sumter Cnty. Bd. of Educ.*, 14-cv-42 (M.D.Ga.) (same).

8. In addition, during my time with the ACLU of Georgia, I was lead counsel in three First Amendment lawsuits. *See Rubin v. Young*, 2019 WL 1418289, No. 1:19-cv-1158-SCJ (N.D. Ga. Mar. 14, 2019) (temporary restraining order, later converted into final judgment, prohibiting the Capitol Police from banning profanity in the State Capitol Building); *Rasman v. Stancil*, 1:18-cv-1321-WSD (N.D. Ga. Mar. 29, 2018) (temporary restraining order prohibiting the Capitol Police from banning hand-held signs in the State Capitol Building); *Solomon v. City of Savannah* (S.D. Ga. 2018) (challenging Savannah's ban on signs during parade featuring the Vice President; Savannah lifted ban as soon as lawsuit was filed). I am lead counsel in a Fourth Amendment lawsuit challenging police practices concerning drivers arrested for being allegedly under the influence of marijuana. *Ebner v. Cobb County*, 17-cv-3722 (N.D. Ga.).

8. In 2019, I was awarded Attorney of the Year by the Daily Report and received the Best LGBTQ+ Lawyers Under 40 Award – Class of 2019 by the National LGBT Bar Association & Foundation.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 26, 2020, at Atlanta, Georgia.

/s/ Sean J. Young

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

BLACK VOTERS MATTER FUND, et al.,

Plaintiffs,

vs.

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

Defendants.

Civil Action No.: 20-cv-1489-AT

DECLARATION OF SOPHIA LIN LAKIN

I, Sophia Lin Lakin, make the following declaration under 28 U.S.C. § 1746.

1. I am, and have been since February 2020, the deputy director of the Voting Rights Project of the national office of the American Civil Liberties Union Foundation (ACLU). From 2015 until I became the deputy director, I was a staff attorney with the Voting Rights Project. I practice exclusively in the area of voting rights.

2. The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with over 1,600,000 members dedicated to defending the principles embodied in the Constitution and our nation's civil rights

laws. The ACLU Foundation is a national nonprofit organization under section 501(c)(3) of the Internal Revenue Code and educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties. The ACLU Voting Rights Project was established in 1965 – the same year that the historic Voting Rights Act (VRA) was enacted – and has litigated more than 300 cases since that time, including numerous voting rights cases in the U.S. Supreme Court, including: *Department of Commerce v. State of New York*, 139 S. Ct. 2551 (2019); *Ohio A Philip Randolph Institute v. Husted*, 138 S. Ct. 1833 (2018); *Shelby County v. Holder*, 570 U.S. 529 (2013); *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008); and *Abrams v. Johnson*, 521 U.S. 74 (1997).

3. I obtained a Bachelors of Arts degree (Political Science) and a Masters of Science degree (Management Science and Engineering) and from Stanford University in 2004, and a Juris Doctor from Stanford Law School in 2012.

4. I was admitted to the practice of law in the State of New York in 2013. I have been continuously engaged in the practice of law on a full-time basis since 2013. I am admitted to the following federal courts: Eastern District of Wisconsin (2015), Fourth Circuit (2016), Fifth Circuit (2017), Sixth Circuit

(2017), Seventh Circuit (2018), Eighth Circuit (2016), Tenth Circuit (2016), Eleventh Circuit (2017), and the United States Supreme Court (2017).

5. My work history is as follows: From 2012 to 2013, I worked as a law clerk for the Honorable Carol Bagley Amon of the U.S. District Court for the Eastern District of New York. From 2014-2015, I worked as a law clerk for the Honorable Raymond J. Lohier, Jr., of the U.S. Court of Appeals for the Second Circuit.

6. From February 2015 to February 2020, I was first a Legal Fellow and subsequently a Staff Attorney in the ACLU's Voting Rights Project. In this capacity, I litigated numerous voting rights cases across the country, including: *League of Women Voters of Tennessee v. Hargett*, 400 F. Supp. 3d 706 (M.D. Tenn. 2019) (lead counsel in case successfully obtaining preliminary injunction in case challenging Tennessee law imposing strict requirements and criminal and civil penalties for noncompliance on community-based organizations that conduct voter registration drives); *Common Cause v. Lawson*, 937 F.3d 944 (7th Cir. 2019) (case challenging unlawful voter roll purge program in Indiana); *Ohio A Philip Randolph Institute v. Husted*, 138 S. Ct. 1833 (2018); *Fish v. Schwab*, 957 F.3d 1105 (10th Cir. 2020) (successfully challenging citizenship documentation requirements for voter registration in Kansas); *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016) (successfully challenging, *inter*

alia, voter ID requirement, cutbacks to early voting and the elimination of same-day registration in North Carolina); *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014) (challenging Wisconsin's voter ID law).

7. From February 2020 to present, I have been the Deputy Director of the ACLU's Voting Rights Project. In this capacity, I supervise and directly participate in the ACLU's docket of voting rights litigation throughout the country, including: *Mo. NAACP v. Missouri*, No. SC98536 (Mo. Supreme Ct.) (lead counsel in case challenging state's absentee ballot restrictions during COVID-19 pandemic); *League of Women Voters of Va. v. Va. State Bd. of Elections*, No. 6:20-CV-00024, 2020 WL 1158249 (W.D. Va. May 5, 2020) (case challenging Virginia's witness requirement for absentee ballots during COVID-19 pandemic); *Thomas v. Andino*, No. 3:20-cv-01552, 2020 WL 2306615 (D.S.C. May 8, 2020) (case challenging South Carolina's absentee ballot restrictions and witness requirement during COVID-19).

8. I have conducting voting rights trainings and continuing legal education courses for numerous audiences and bar associations, including the National Asian Pacific American Bar Association, National Association for the Advancement of Colored People, South Asian Bar Association of North American, and the Kansas City Metropolitan Bar Association. I have also spoken on voting

rights issues at various law schools, including Stanford Law School, Yale Law School, Harvard Law School, Columbia Law School, and New York Law School.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 31, 2020, at New York City, New York.

/s/ Sophia Lin Lakin

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

BLACK VOTERS MATTER FUND, et al., Plaintiffs, vs. BRAD RAFFENSPERGER, in his official capacity as Secretary of State of Georgia, et al., Defendants.	Civil Action No.: 20-cv-1489-AT

DECLARATION OF DALE E. HO

I, Dale E. Ho, make the following declaration under 28 U.S.C. § 1746.

1. I am, and have been since May 2013, the director of the Voting Rights Project of the national office of the American Civil Liberties Union Foundation (ACLU). I practice exclusively in the area of voting rights.

2. The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with over 1,600,000 members dedicated to defending the principles embodied in the Constitution and our nation's civil rights laws. The ACLU Foundation is a national nonprofit organization under section 501(c)(3) of the Internal Revenue Code and educates the public about civil liberties

and employs lawyers who provide legal representation free of charge in cases involving civil liberties. The ACLU Voting Rights Project was established in 1965 – the same year that the historic Voting Rights Act (VRA) was enacted – and has litigated more than 300 cases since that time, including numerous voting rights cases in the U.S. Supreme Court, including: *Department of Commerce v. State of New York*, 139 S.Ct. 2551 (2019); *Ohio A Philip Randolph Institute v. Husted*, 138 S.Ct. 1833 (2018); *Shelby County v. Holder*, 570 U.S. 529 (2013); *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008); and *Abrams v. Johnson*, 521 U.S. 74 (1997).

3. I obtained a Bachelors of Arts degree from Princeton University in 1999, and a Juris Doctor from Yale Law School in 2005.

4. I was admitted to the practice of law in the State of New York in 2006. I have been continuously engaged in the practice of law on a full-time basis since 2006. I am admitted to the following federal courts: U.S. District Courts for the Southern District of New York (2008), Eastern District of New York (2008); Eastern District of Wisconsin (2013), U.S. Court of Appeals for the First Circuit (2016), Second Circuit (2008), Fourth Circuit (2014), Fifth Circuit (2013), Sixth Circuit (2014), Seventh Circuit (2014), Eighth Circuit (2016), Ninth Circuit

(2010), Tenth Circuit (2016), District of Columbia Circuit (2010), and the United States Supreme Court (2010).

5. My work history is as follows: From 2005 to 2006, I worked as a law clerk for the Honorable Barbara S. Jones in the U.S. District Court for the Southern District of New York. From 2006 to 2007, I worked as a law clerk for the Honorable Robert S. Smith in the New York Court of Appeals. From 2007 to 2009, I was an associate at the law firm, Fried, Frank, Harris, Shriver, & Jacobson LLP ("Fried Frank") in New York. At Fried Frank, I litigated complex commercial matters and federal civil rights cases, including work under the federal Voting Rights Act ("VRA"). In particular, I assisted in drafting an *amicus* brief in *Bartlett v. Strickland*, 556 U.S. 1 (2009), a voting rights case before the United States Supreme Court. That brief was cited in the dissenting opinion of Justice Breyer, 556 U.S. at 45.

6. From 2009 to April 2013, I worked as Assistant Counsel in the Political Participation Group at the NAACP Legal Defense and Education Fund, Inc. ("LDF"). At LDF, my practice was devoted almost exclusively to voting rights litigation in federal court. Among my VRA matters at LDF were: *Shelby County v. Holder*, 133 S.Ct. 2612 (2013) (representing intervenors defending the constitutionality of Sections 4(b) and 5 of the VRA before the U.S. Supreme Court); *Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010) (challenging

Washington State's felon disfranchisement law under Section 2 of the VRA); and *Florida v. Holder*, 820 F. Supp. 2d 85 (D.D.C. 2011) (challenging various changes to Florida's voting laws under Section 5 of the VRA).

7. From May 2013 to present, I have been the Director of the Voting Rights Project at the American Civil Liberties Union ("ACLU"). In this capacity, I supervise and directly participate in the ACLU's docket of voting rights litigation throughout the country, including: *Department of Commerce v. State of New York*, 139 S.Ct. 2551 (2019), which I argued successfully in the United States Supreme Court; *Ohio A Philip Randolph Institute v. Husted*, 138 S.Ct. 1833 (2018); *Fish v. Kobach*, 840 F.3d 710 (10th Cir. 2016) (lead counsel in case challenging citizenship documentation requirements for voter registration in Kansas), which I argued successfully in the Tenth Circuit; *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016) (successfully challenging, *inter alia*, voter ID requirement, cutbacks to early voting and the elimination of same-day registration in North Carolina); *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014) (challenging Wisconsin's voter ID law under the VRA), which I argued in the Seventh Circuit; and *Ohio State Conference of N.A.A.C.P. v. Husted*, 768 F.3d 524, 533 (6th Cir. 2014) (challenging early voting cutbacks in Ohio under the VRA), *vacated sub nom.*, 2014 WL 10384647 (6th Cir. Oct. 1, 2014).

7. I have lectured and written extensively on issues of voting rights and election law. From 2013 to 2017, I served adjunct professor of law at Brooklyn Law School, where I taught a course on Election Law. Since 2014, I have served as an adjunct professor of clinical law at NYU Law School. I have published articles on election law topics in several law reviews, including the *Yale Law Journal Forum*; *Harvard Civil Rights-Civil Liberties Law Review*; the *Stanford Law & Policy Review*; and the *NYU Journal of Law and Public Policy*. I have spoken on voting rights issues at various law schools, including Yale Law School, Harvard Law School, Stanford Law School, Columbia Law School, and NYU School of Law. I have also served on the faculty for redistricting seminars for state legislators in Louisiana and Texas.

8. I have testified on voting rights issues in the U.S. House of Representatives, as well as state legislatures around the country on election law issues, including in Kentucky, California, Connecticut, and New York. I. I am also a member of the Election Law Committee of the American Bar Association; and for three years, from 2009 through 2012, I served as a member of the Election Law Committee of the New York City Bar Association. J. In 2019, I received the President's Award from the National Asian Pacific Bar Association (NAPABA). In 2018, I was named to the New York City Charter Revision Commission by New

York City Mayor Bill de Blasio. In 2017, I was named one of the Best Asian Pacific American lawyers Under the Age of 40 by NAPABA.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 29, 2020, at New York City, New York.

/s/ Dale E. Ho

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Coronavirus Disease 2019 (COVID-19)

People Who Are at Higher Risk for Severe Illness

COVID-19 is a new disease and there is limited information regarding risk factors for severe disease. Based on currently available information and clinical expertise, **older adults and people of any age who have serious underlying medical conditions** might be at higher risk for severe illness from COVID-19.

Based on what we know now, those at high-risk for severe illness from COVID-19 are:

- People 65 years and older
- People who live in a nursing home or long-term care facility

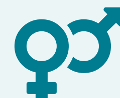
People of all ages with underlying medical conditions, particularly if not well controlled, including:

- People with chronic lung disease or moderate to severe asthma
- People who have serious heart conditions
- People who are immunocompromised
  - Many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications
- People with severe obesity (body mass index [BMI] of 40 or higher)
- People with diabetes
- People with chronic kidney disease undergoing dialysis
- People with liver disease

Older Adults

People with Asthma

At Risk For Severe Illness

 People with HIV

People with Liver Disease

COVID-19: Are You at Higher Risk for Severe Illness?

Resources

- ASL Video Series: COVID-19: Are You at Higher Risk for Severe Illness?
- Learn how you can help protect yourself if you are at higher risk of severe illness from COVID-19

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