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Sent via email

Special Committee on Election Integrity
Georgia House of Representatives
131-A State Capitol
Atlanta, Georgia 30334

Re: Opposition to Provisions in House Bill 531

Dear Chair Fleming and Committee Members:

As an organization concerned with fair elections and voter participation in Georgia, Fair Fight Action submits this letter to express its strong opposition to several provisions of House Bill ("H.B.") 531. By rolling back early, absentee, and day-of voting in ways that disproportionately inconvenience voters of color and marginalized groups, this significant piece of legislation violates both the Constitution and federal statutes. The bill also unconstitutionally burdens the fundamental right to vote of all Georgians while failing to address any legitimate concern. As investigations into the 2020 election and the longer course of history have borne out, voter fraud is exceedingly rare. The possibility of a few people illegally casting votes fails to justify measures that will take that ability away from hundreds of thousands.

H.B. 531's across-the-board restrictions demonstrate that its purpose is instead to make it harder for Georgians to exercise their right to vote. It therefore constitutes a brazen attack on our democracy. Georgia voters deserve public servants concerned with protecting the constitutional rights of their constituents—not their own power. Rather than shore up confidence in the state's election system after a barrage of disparaging attacks and conspiracy theories, this hastily crafted bill further fuels these conspiracies and undermines the fundamental democratic principle that every citizen's vote matters and deserves to be counted.

I. The proposed legislation is evidence of history repeating itself.

Since its inception, the state of Georgia has suppressed the right to vote of Black people and other marginalized groups. H.B. 531 is the state's latest effort to disenfranchise Georgia citizens, including those who are Black, poor, rural, young, or uneducated. Even more, the state brings its latest suppressive efforts under the guise of protection from voter fraud, a myth that has been debunked in general with respect to American elections, and specifically with regard to elections in Georgia. Georgia's pretextual attempt to secure elections, rather, is yet another tactic in a long history of suppressive and discriminatory tactics to prevent people of color and marginalized groups from wielding political power, particularly on the heels of an election of record turnout numbers for such groups and a change in state-wide federal political control.

Georgia's first constitution in 1777 limited the franchise to "male white inhabitants, of the age of twenty-one years."¹ The state constitution continued to exclude Black people and women for almost an entire century, choosing to limit explicitly the franchise to only white males in three subsequent versions.² In 1865, following the Civil War, the federal government instituted Reconstruction, a period intended to rebuild the South and help ensure the rights of the newly freed slaves.³ During Reconstruction, mostly due to the occupation of federal soldiers in the southern former-Confederate states, political participation increased as newly freed slaves enjoyed the right to vote and to hold political office for the first time.⁴ In Georgia, for instance, Black people totaled about 50 percent of all registered voters.⁵

When Reconstruction ended in 1877, Georgia returned to the systemic, and violent, oppression and suppression of Black people, particularly of their right to vote. Along with the violent intimidation by the domestic terrorist organization Klu Klux Klan, which was founded in Georgia in 1868, Georgia implemented legislative and policy tools to suppress further the Black vote. From the end of Reconstruction to the enactment of the Voting Rights Act of 1965 ("VRA"), the state of Georgia adopted multiple policy tactics to disenfranchise Black voters, including literacy tests, poll taxes, felony disenfranchisement, residency requirements, onerous registration requirements, voter challenges and purges, discriminatory redistricting and apportionment plans, all-white primaries, and the

¹ Ga. Const. of 1777, art. IX.

² Ga. Const. of 1789, art. IV; Ga. Const. of 1861; Ga. Const. of 1865.

³ LAUGHLIN McDONALD, A VOTING RIGHTS ODYSSEY: BLACK ENFRANCHISEMENT IN GEORGIA 11 (Cambridge University Press, 2003).

⁴ *Id.* at 12.

⁵ *Runoff Bill Revived by Senate Unit: Majority Vote Plan Sent to Sub-Panel*, THE ATLANTA CONSTITUTION (Mar. 1, 1963).

expulsion of Blacks from political office.⁶ Georgia also used county administration of elections as a way to dilute the Black vote. By assigning a point system to counties based on whether a county was rural, town, or urban, with the least points going to urban counties, Black electors' votes were effectively diluted and disenfranchised.⁷

Not surprisingly, Georgia lawmakers vehemently opposed the VRA.⁸ Georgia's governor at the time, Carl Sanders, wrote a letter to President Lyndon B. Johnson objecting to the prohibition against literacy tests and called the VRA "unnecessary."⁹ Fortunately for Georgia's Black citizens, President Johnson signed the VRA into law. Due to Georgia's abysmal history of voter suppression and intimidation, Georgia was one of nine entire states covered by the preclearance provisions of the VRA.

In response to the enactment of the VRA, Georgia attempted to find other, seemingly innocuous, ways to suppress the Black vote. For instance, Georgia implemented at-large election systems for school board seats and local governments, thus effectively diluting the Black vote and guaranteeing all-white control of local politics, despite a growing Black electorate.¹⁰ In addition to implementing at-large election systems, Georgia engaged in discriminatory redistricting schemes. Thanks to the VRA, a 1981 discriminatory redistricting plan that was overseen by the chair of the Georgia House appropriations committee who openly referred to Black people as "niggers," failed Department of Justice preclearance and was found to treat whites and Blacks in a disparate manner.¹¹

Georgia lawmakers continued to oppose the VRA until the Supreme Court of the United States overhauled the Section 4 preclearance formula in *Shelby v. Holder*, 570 U.S. 529 (2013). Following the Supreme Court's decision in *Shelby*, Georgia and its subdivisions began implementing election changes that likely would not have passed muster under preclearance. For example, prior to Georgia's 2018 election, the Randolph County Board of Elections voted three to zero to close seven majority Black precincts.¹² Importantly, prior to Randolph County's attempt to close polling locations in Black neighborhoods, the office of then-Secretary of State Brian Kemp provided guidance regarding polling location

⁶ McDonald, *supra* note 3, at 2.

⁷ Scott E. Buchanan, *County Unit System*, NEW GEORGIA ENCYCLOPEDIA (Aug. 20, 2020), <https://www.georgiaencyclopedia.org/articles/counties-cities-neighborhoods/county-unit-system>.

⁸ McDonald, *supra* note 3, at 11.

⁹ *Id.* at 12.

¹⁰ *Id.* at 130, 155.

¹¹ *Id.* at 170.

¹² Richard Fausset, *Georgia County Rejects Plan to Close 7 Polling Places in Majority Black Areas*, THE NEW YORK TIMES (Aug. 23, 2018), <https://www.nytimes.com/2018/08/23/us/randolph-county-georgia-voting.html>.

closures to the county boards of elections where the Secretary of State reminded counties on two separate occasions that counties were no longer required to preclear laws with the Department of Justice in order to close polling locations.¹³ Randolph County did not proceed with the poll closings only because of public backlash. Since 2012, more than 200 polling locations have closed in Georgia.¹⁴

Shortly before and following *Shelby*, Georgia implemented numerous policies and acts in addition to attempts to close polling locations in communities with high numbers of people of color. Since 2012, former Georgia Secretary of State and current governor Brian Kemp purged an estimated 1.5 million people from the state voter rolls, 107,000 of whom were removed for not having voted in the two previous general elections.¹⁵ These purges disproportionately affected Black people, whose voter registrations were removed at a rate that was 1.25 times higher than for white Americans in some counties.¹⁶ Georgia's purge law is often referred to as "use it or lose it." In 2018, 53,000 Georgia voter registrants—70 percent of whom were Black—were placed in "pending" status by the Secretary of State because of minor misspellings or missing hyphens on their registration forms.¹⁷ In Georgia's 2018 gubernatorial election, more than 1,800 voting machines sat unused in a warehouse on Election Day in three of Georgia's largest and most heavily Democratic counties.¹⁸

¹³ Mark Niesse et al., *Voting Precincts Closed Across Georgia Since Election Oversight Lifted*, THE ATLANTA JOURNAL CONSTITUTION (Sept. 4, 2018), <https://www.ajc.com/news/state--regional-govt--politics/voting-precincts-closed-across-georgia-since-election-oversight-lifted/bBkHxptlim0Gp9pKu7dfrN/>.

¹⁴ Daniel Garisto, *Smartphone Data Show Voters in Black Neighborhoods Wait Longer*, SCIENTIFIC AMERICAN (October 1, 2019), <https://www.scientificamerican.com/article/smartphone-data-show-voters-in-black-neighborhoods-wait-longer1/>.

¹⁵ Angela Caputo et al., *They Didn't Vote ... Now They Can't Georgia purged an estimated 107,000 people largely for not voting, an APM Reports investigation shows*, APM REPORTS (Oct. 19, 2018), <https://www.apmreports.org/story/2018/10/19/georgia-voter-purge>.

¹⁶ *Id.*

¹⁷ Ted Enamorado, *Georgia's 'exact match' law could potentially harm many eligible voters*, THE WASHINGTON POST (Oct. 20, 2018 7:00 AM EDT), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/10/20/georgias-exact-match-law-could-disenfranchise-3031802-eligible-voters-my-research-finds/>.

¹⁸ Amy Gardner et al., *Brian Kemp's lead over Stacey Abrams narrows amid voting complaints in Georgia governor's race*, THE WASHINGTON POST (Nov. 7, 2018, 8:38 PM EST), https://www.washingtonpost.com/politics/brian-kemps-lead-over-stacey-abrams-narrows-amid-voting-complaints-in-georgia-governors-race/2018/11/07/39cf25f2-e2b7-11e8-b759-3d88a5ce9e19_story.html.

H.B. 531 is yet another law that follows in Georgia's legacy of racism and voter suppression. Georgia can only begin to atone for its racist and discriminatory past by fighting to ensure equality for all Georgians in the present and the future; HB 531 takes Georgia backward, it does not move the state forward.

II. The proposed legislation violates fundamental Constitutional and statutory rights.

The right to vote is “precious” and “fundamental.”¹⁹ As the committee members are surely aware, ongoing litigation challenges the state's unconstitutional legislation, policies, and gross mismanagement that resulted in an election that deprived Georgia citizens—particularly those of color—of their fundamental right to vote.²⁰ Instead of addressing the substantial and unnecessary barriers Georgia voters face, the changes proposed in H.B. 531 only exacerbate the problem in violation of the First, Fourteenth, and Fifteenth Amendments of the U.S. Constitution, as well as Section 2 of the VRA.

Many provisions of H.B. 531 will disproportionately impact Black and poor voters. This flies in the face of fundamental principles of fairness embedded in our Constitution's Equal Protection Clause because, as the Supreme Court has explained, “[h]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another.”²¹ Moreover, Congress specifically passed the VRA to remedy decades of systemic discrimination against Black voters,²² providing that no “standard, practice, or procedure shall be imposed or applied by any State . . . in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.”²³

Every citizen therefore has a right to participate in elections on an equal basis with their fellow citizens.²⁴ The Constitution extends this principle of equal treatment to early and absentee voting. Indeed, the Supreme Court has stated that “it is plain that permitting absentee voting by some classes of voters and denying the privilege to other classes of otherwise qualified voters in similar circumstances, without affording a comparable alternative means to vote, is an arbitrary discrimination violative of the Equal Protection Clause.”²⁵ For example, if early voters have disproportionately lower incomes and less

¹⁹ *Harper v. Va. State Bd. Of Elections*, 383 U.S. 663, 670 (1966).

²⁰ *Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251, 1265 (N.D. Ga. 2019).

²¹ *Bush v. Gore*, 531 U.S. 98, 104-105 (2000).

²² *South Carolina v. Katzenbach*, 383 U.S. 301, 310 (1966).

²³ 52 U.S.C. § 10301(a).

²⁴ *Dunn v. Blumstein*, 405 U.S. 330, 3360 (1972).

²⁵ *Am. Party of Texas v. White*, 415 U.S. 767, 795 (1974) (citing *O'Brien v. Skinner*, 414 U.S. 524 (1974)).

education than Election Day voters, a law that eliminates evening and weekend early voting hours burdens that group's right to vote.²⁶

In evaluating the constitutionality of burdens on the right to vote such as those in H.B. 531, courts typically weigh “the character and magnitude of the asserted injury” against “the precise interests put forward by the State as justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiffs’ rights.”²⁷ As explained in further detail below, many provisions in H.B. 531 unnecessarily burden the right to vote without any legitimate, non-discriminatory justification. They therefore constitute arbitrary discrimination and cannot withstand constitutional scrutiny.

III. There is scant evidence of fraud in the conduct of Georgia elections to justify such a significant retrenchment in voting rights.

To the extent the proposed changes are meant to combat voter fraud, they do not address that problem, because no real problem exists. Despite H.B. 531 proponents’ allegations to the contrary, voter fraud is not a significant problem in the state of Georgia. Indeed, the state’s senior election official has repeatedly confirmed as much in recent months. After the 2020 election, Georgia Secretary of State Brad Raffensperger said “Georgia’ voting system has never been more secure or trustworthy” and “the truth is that the people of Georgia – and across the country – should not have any remaining doubts” about who won the election.²⁸ He continued to refute claims of voter fraud in a letter to Congressional representatives in January, noting that after “diligently investigating all claims of fraud or irregularities” his office found “nowhere close to sufficient evidence to put in doubt the result” of the election.²⁹

Numerous other high-ranking Georgia election officials, all Republicans, have also recently defended the integrity of *Georgia’s* elections against spurious claims of fraud. Lieutenant Governor Geoff Duncan chastised “misinformation” about voter fraud that is

²⁶ *Obama for America v. Husted*, 697 F.3d 423, 431 (6th Cir. 2012).

²⁷ *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

²⁸ Brad Raffensperger, Georgia's Election Results are Sound, Washington Post (Nov. 21, 2020), <https://www.washingtonpost.com/opinions/2020/11/21/brad-raffensperger-georgia-results-2020-election-trustworthy/>.

²⁹ Letter from Ga. Secretary of State Brad Raffensperger to Congressman Jody Hice, Congressman Barry Loudermilk and Senator Kelly Loeffler (Jan. 6, 2021), [https://sos.ga.gov/admin/uploads/Letter%20to%20Congress%20from%20Secretary%20Raffensperger%20\(1-6-21\).pdf](https://sos.ga.gov/admin/uploads/Letter%20to%20Congress%20from%20Secretary%20Raffensperger%20(1-6-21).pdf).

spread with the “sole intent of flipping an election.”³⁰ In response to allegations of fraud, Ryan Germany, general counsel in the Secretary of State’s office, told President Trump in January, “[t]he numbers that we are showing are accurate.”³¹ Gabriel Sterling, another top state election official, said claims of fraud in Georgia in 2020 were “fantastical, unreasonable. Lacking in any factual reality.”³²

Put simply, this outcry over voter fraud is a smokescreen. Despite laborious investigations to uncover fraudulent activity, the reality is that fraud is exceedingly rare in Georgia. Just last week, an independent monitor reported to the State Elections Board that in 250 hours of onsite observation in Fulton County, he did not witness a single action that “involved dishonesty, fraud or intentional malfeasance.”³³ After observing these operations related to both the November 2020 and January 2021 statewide elections, the monitor witnessed nothing “that would undermine the validity, fairness and accuracy of the results published and certified by Fulton County.”³⁴ In another investigation this past December, investigators from the Secretary of State’s office and the Georgia Bureau of Investigation reviewed a random sample of more than 15,000 absentee ballots in Cobb County to audit the county’s signature verification procedures.³⁵ Investigators only identified two cases where a signature was improperly matched—and in both cases, subsequent investigation confirmed the proper voters had submitted the ballots.³⁶ In all, they found Cobb County

³⁰ Greg Bluestein, *Duncan Pushes Back on False Voter Fraud Claims: "We're Better Than This,"* Atlanta Journal-Constitution (Dec. 1, 2020), <https://www.ajc.com/politics/politics-blog/duncan-pushes-back-on-false-voter-fraud-claims-were-better-than-this/GSNRMYPBBADHZ5RQ7LDTVHCE/>.

³¹ Amy Gardner & Paulina Firozi, *Here's the Full Transcript and Audio of the Call Between Trump and Raffensperger*, Washington Post (Jan. 5, 2021), https://www.washingtonpost.com/politics/trump-raffensperger-call-transcript-georgia-vote/2021/01/03/2768e0cc-4ddd-11eb-83e3-322644d82356_story.html

³² Scott Pelley, *Georgia Secretary of State Describes Call Where Trump Pressured Him to Find Evidence of Voter Fraud*, CBS News 60 Minutes (Jan. 10, 2021), <https://www.cbsnews.com/news/georgia-election-brad-raffensperger-60-minutes-2021-01-10/>.

³³ *Raffensperger Sends More Voting Cases to Prosecutors*, Georgia Secretary of State (Feb. 18, 2021), https://sos.ga.gov/index.php/elections/raffensperger_sends_more_voting_cases_to_prosecutors.

³⁴ *Id.*

³⁵ Georgia Secretary of State Investigations Division, Georgia Secretary of State/ Georgia Bureau of Investigation ABM Signature Audit Report (Dec. 29, 2020), <https://sos.ga.gov/admin/uploads/Cobb%20County%20ABM%20Audit%20Report%202021229.pdf>.

³⁶ *Id.*

had a “99.99% accuracy rate in performing correct signature verification” and there were “[n]o fraudulent absentee ballots . . . identified.”³⁷

The same pattern bears out in investigations of voter fraud across the United States. A much-ballyhooed commission to investigate voter fraud established by President Trump after the 2016 election abruptly disbanded in 2018 after failing to find any significant fraud.³⁸ In a sweeping survey of voter fraud, the Brennan Center for Justice, a leading policy think tank for democracy and justice initiatives, found that it was more likely an individual would be struck by lightning than impersonate another at the polls.³⁹ The same is true, the Brennan Center later noted, for vote-by-mail fraud. In Oregon, for instance, among 100 million mail-in ballots received since 2000, there have only been roughly a dozen instances of fraud.⁴⁰ A national survey by the Walter J. Cronkite School of Journalism and Mass Communications at Arizona State University found the rate of voter fraud from 2000-2012 was “infinitesimal.”⁴¹ During that time period, there were only 27 allegations in Georgia of individuals casting an ineligible vote.⁴² In a sweeping review of national voter fraud allegations since 2000, Professor Lorraine Minnite found that “[v]oter fraud is a politically constructed myth” and noted that misinformation about voter fraud is often meant “to persuade the public about the need for more administrative burdens on the vote.”⁴³ Precisely this tactic is at work in H.B. 531.

IV. An analysis of the various provisions in the proposed legislation reveals serious problems with substance and with drafting.

Our comments are based on our review of the substitute H.B. 531, bearing the number LC 28 02278. As we said at the outset of this submission, we have concerns about

³⁷ *Id.*

³⁸ Michael Tackett & Michael Wines, Trump Disbands Commission on Voter Fraud, NY Times (Jan. 3, 2018), <https://www.nytimes.com/2018/01/03/us/politics/trump-voter-fraud-commission.html>

³⁹ Justin Levitt, *The Truth About Voter Fraud*, Brennan Center for Justice (2007), https://www.brennancenter.org/sites/default/files/2019-08/Report_Truth-About-Voter-Fraud.pdf.

⁴⁰ Wendy Weiser & Harold Ekeh, The False Narrative of Vote-by-Mail Fraud, Brennan Center for Justice (April 10, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>.

⁴¹ Natasha Khan & Corbin Carson, *Comprehensive Database of U.S. Voter Fraud Uncovers No Evidence that Photo ID is Needed*, News21 (Aug. 12, 2012), <https://votingrights.news21.com/article/election-fraud/>

⁴² See, *Election Fraud in America*, News21 (Aug. 12, 2012), <https://votingrights.news21.com/interactive/election-fraud-database/>.

⁴³ Lorraine Minnite, *The Myth of Voter Fraud* 6, 10 (2007).

the constitutionality and legality of a number of provisions in the proposed legislation. While we have not been afforded sufficient opportunity to review, analyze, and understand this complex legislation, several provisions stand out as particularly problematic. Thus, the fact that we comment on any one provision should not be viewed as acquiescence in any other about which we do not comment.

We note at the outset that the proposed changes in H.B. 531 and other pending election legislation will result in unfunded mandates that could well force counties to adopt increases in local taxes.

Section 1: Disallowing any non-governmental funding

Section 1 of the proposed legislation would amend O.C.G.A. § 21-2-71 by adding a subsection (b) that prohibits superintendents from accepting private funding to relieve budgetary concerns about the cost of conducting elections. As you know, during the 2020 election cycle, certain private groups made funding available to counties across the state—indeed, across the country—to assist them in addressing the extraordinary costs associated with administering elections during a pandemic with unprecedented turnout.

If the proponents' goal is to assist the counties administer elections more fairly and more accurately, it is surprising to prohibit those counties from accepting funding that is available to make their jobs easier and less costly to the taxpayers. Yet, without any evidence or attempted showing that the private funding somehow interfered with the operation of the election, the proponents of this legislation now ban that potential revenue source. That makes no sense and runs squarely counter to the professed interest in assisting local election officials.

Of potential significance is the fact that the prohibition on the use of private funds for election assistance could threaten home rule and the ability of localities to deploy private funds for programming, which, as you know, is commonplace for other governmental services.

Section 3: Allowing poll workers to work in adjoining counties

We support the provision in the proposed legislation to amend O.C.G.A. § 21-2-92 to allow poll workers to work in adjoining counties. We recommend the SEB adopt rules and regulations to implement the new provision so as to standardize the procedure for meeting the requirements set out in new subsection (2).

Section 5: Disallowing any non-governmental funding

Aside from our substantive objection to the inclusion of a provision that prohibits counties from accepting any outside funding as detailed in Section 1, above, this is an

example of bad drafting. The original language of O.C.G.A. § 21-2-212 addresses the requirement that registrars prepare budget estimates. Whether the registrar is permitted to accept non-governmental funding has nothing to do with preparing a budget. The inclusion of the two entirely unrelated provision in the same subsection is potentially confusing.

Section 6: Precinct splitting

While we certainly applaud any efforts to reduce long lines at voting locations, the proposed change to O.C.G.A. § 21-2-263 (by adding a subsection (2)) is flawed. It does not provide any notice to voters of the changes in their precinct assignment. And, when that is coupled with the proposed changes in O.C.G.A. § 21-2-419 to prevent out-of-precinct voting, it imposes an unacceptable burden on the fundamental right to vote.

Section 7: Prohibition on routine use of mobile voting

Limiting the use of a mobile voting option, as proponents' amendment to O.C.G.A. §21-2-266 proposes, is a vindictive slap at Fulton County. Without any basis in law or fact—read, no state interest, let alone a compelling state interest—the proposed amendment limits access to the polls. The mobile unit was one of the measures that Fulton County adopted in an effort to address the now-familiar problems that the county experienced during the 2020 General Election Primary. The voting van traveled around the county to help alleviate long lines and problems with hardware during the 2020 General Election and 2021 Runoff. By all accounts, it operated smoothly and was well-received by voters. Moreover, it is unclear what problem the prohibition is intended to address. Fulton County used the mobile unit to “supplement the capacity of existing polling places.”⁴⁴ The proposal is vague, standardless, and unenforceable. Who will decide whether “emergency circumstances” exist and what criteria will they apply?

Section 9: The requirement of one machine per 250 voters only applies in a general election

The proposed amendment to O.C.G.A. § 21-2-367 to allow an election superintendent to decide how many machines to use in all but general elections runs counter to the expressed desire of Rep. Williams to ensure that all counties are the same. *See* February 19, 2021 video of committee hearing. And, it runs counter to the duties of the State Election Board to obtain uniformity.⁴⁵ Furthermore, there is no showing that any

⁴⁴ H.B. 531, LC 28 0227S, line 181.

⁴⁵ *See* O.C.G.A. § 21-2-31(1). *See also* *Ne. Ohio Coal. For the Homeless v. Husted*, 837 F.3d 612, 635 (6th Cir. 2016) (A plaintiff may state an equal protection claim by alleging that lack of

change is necessary; the standard of one machine per 250 is an acceptable standard that should apply in all elections.⁴⁶

Section 11: Changes to absentee ballot procedures

As drafted, the amendment would require a voter to provide his or her name, date of birth, address, and either a Georgia driver's license number or identification card. The registrar or absentee ballot clerk is directed, in subsection (b)(1), to compare the voter's name, date of birth, and driver's license or identification card number to information on file with the registrar's office. If all three do not match, the voter will only receive a provisional absentee ballot. If, as proponents of this legislation have claimed, one intent is to reduce the burden on over-worked election staffs, this provision will accomplish the opposite. Even if such scrutiny were appropriate when determining whether to accept a voted ballot—and we certainly do not concede that it is—there is no justification for imposing these hurdles to merely apply for a ballot. In fact, when, for the 2020 Presidential Preference Primary, the Secretary of State sent absentee ballot applications to all registered voters in Georgia, there was no evidence the process was abused or resulted in fraudulent applications. Simply put, the threshold for obtaining a ballot should be simple and easy to administer. This legislation will lead to a contrary result.

We oppose the proposed changes to O.C.G.A. § 21-2-381 on other grounds as well. Specifically, we object to voter's having to include their private information—information that could subject them to a very real threat of identity theft if revealed—on an envelope that could easily be compromised. Further, while proponents of this legislation claim that ninety-seven percent of the electorate has either a Georgia driver's license or Georgia identification card, implying it is hardly a burden to ask them to provide a number, the proponents ignore the three percent. And, in Georgia, with more than 7,692,567 registered

statewide standards results in a system that deprives citizens of the right to vote based on where they live).

⁴⁶ See <https://www.brennancenter.org/our-work/research-reports/brennan-center-submits-follow-comment-georgia-state-board-elections> ("But the proposed rule amendments are not a good solution to this problem, as our analysis below shows that they would risk long lines by permitting polling places to have far fewer than one voting machine per 250 registered voters on election day. Below, we show that long lines are likely to occur if counties reduce the minimums and adjust machine allocations based on actual early voting data, which would lead to fewer resources for those precincts showing high voter enthusiasm during the early voting period. We further demonstrate that long lines are likely to occur even if counties use county-wide averages of early voting rates to determine minimums, due to high variation in early and election day turnout.")

voters, that means that 230,777 electors do not have the requisite identification and will therefore incur a burden in complying with the law. When that burden is weighed against the state's ill-defined, unsupported, and unsupportable interest, the state cannot and should not prevail.

Section 12: The use of drop boxes

We commend the proponents' recognition of the importance of drop boxes but suggest that the limitations the proposed legislation imposes are onerous and, indeed, unacceptable to the very officials who will be charged with administering the proposal. We have three primary objections to the proposed amendments to O.C.G.A. § 21-2-382. First, there is no plausible justification for banning the use of drop boxes on the actual day of an election.⁴⁷ It is well-established that drop boxes are a convenient and reliable way for voters to deliver their ballots, including on election day. Second, requiring drop boxes to be located inside the location where advance voting is conducted defeats the purpose and makes the job of poll workers—already burdened—more complex as they are required to accommodate a drop box in what, for many, are likely tight spaces. And, they will be required to check the box and confirm its contents (or lack thereof) on yet another form. There is no evidence of problems arising with the placement of drop boxes at outside locations and therefore no justification for imposing these conditions. Third, the requirement of “constant surveillance,”⁴⁸ suggests the proponents' intention that a person be stationed at the box while the advance voting location is open. There are several problems with that provision, not the least of which is the potential for voter intimidation if armed law enforcement or security personnel are stationed at the box. In addition, the surveillance requirement imposes yet another cost on the counties, as will the requirement that teams of at least two persons collect the ballots.

Sections 13 and 14: Information on Absentee Ballot Envelopes

We have previously addressed the propriety of including personal identifying information on the outside envelope as the proposed amendments to O.C.G.A. § 21-2-384 and § 21-2-385 require. The necessity for including such information, alone, is a voter intimidation tactic given many electors are protective of their personal data.

Moreover, it is well-known that requiring a date of birth leads to high rejection rates and, in fact, was one of the reasons (others including court rulings) the birth date requirement was excluded from H.B. 316 in 2019. Two federal courts in this state, citing the Voting Rights Act, 52 U.S.C. § 10101 (a)(2)(B), previously enjoined Georgia election

⁴⁷ See O.C.G.A. § 21-2-382(b)(1).

⁴⁸ See *id.*

officials from rejecting absentee ballots on the basis of omitted or erroneous birth date information.⁴⁹ Resurrecting this provision simply invites further litigation.

Section 15 and 24: Reductions in early voting and runoff times

The proposed amendments to O.C.G.A. § 21-2-385 on advance voting are a thinly veiled discriminatory effort to reduce the access of people of color to polling locations. It is well-known that Saturday and Sunday early voting is vitally important to communities of color.⁵⁰

The data from the 2020 election are telling about the importance of the early vote period. During the 2020 General Election, more than 2.6 million Georgians voted early in-person.⁵¹ Also during the 2020 General Election, fully ten percent of Georgia voters cast their ballots on weekends.⁵² In 100 of the 159 Georgia counties, Hispanic voters were more likely than white Georgians to vote on weekends.⁵³ In fact, white voters were least likely to vote on weekends.⁵⁴

⁴⁹ See *Democratic Party of Georgia, Inc. v. Crittenden*, 347 F. Supp. 3d 1324, 1339-41 (N.D. Ga. 2018) (adopting the rationale of the court in *Martin v. Crittenden*, 541 F. Supp. 3d, 1302 (N.D. Ga. 2018) and concluding “absentee mail-in ballots rejected solely because of an omitted or erroneous birth date must be counted.”); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1304, 1308-09 (N.D. Ga. 2018) (concluding that an elector’s birthdate is not material to determining eligibility of an absentee voter and that rejecting ballots for omitted or incorrect birthdate information therefore violates the Voting Rights Act, 52 U.S.C. § 10101(a)(2)(B)).

⁵⁰ See generally The Center for New Data, *Access to the Polls in Georgia: Assessment of Early Vote Wait Times in the General Election and Potential Effects on Voting Restrictions in the Runoff*, Observing Democracy Program Memo, December 6, 2020 (A.6. Racial Disparities in Early Vote Weekend Voting) (available at <https://www.newdata.org/ga-analysis>). See also William H. Woodwell, Jr., *Voting Rights Under Fire: Philanthropy’s Role in Protecting and Strengthening American Democracy*, A Report by Carnegie Corporation of New York, November 2019 (available at https://production-carnegie.s3.amazonaws.com/filer_public/bc/46/bc469634-87fd-4233-bc93-d9a89bfc9c00/voting-rights-fin.pdf).

⁵¹ See Georgia Secretary of State Website, *Record Breaking Early In-Person Voting Continues October 31, 5 p.m. Update*, https://sos.ga.gov/index.php/elections/record_breaking_early_in-person_voting_continues_october_31_5_pm_update.

⁵² See The Center for New Data, *supra*.

⁵³ *Id.*

⁵⁴ *Id.*

And, courts have rejected these kinds of changes to the law.⁵⁵ The intent behind the proposed amendment is clear: restrict access to the polls, with knowledge that the provision will disparately impact communities of color. As such, it cannot stand. We are also concerned about the impact of these restrictions on Jewish voters who may be unable to vote during the sabbath due to religious observance and services and for whom Sunday voting is an essential option.

Section 16: Verifying a voter's identity

Under the proposed amendment to O.C.G.A. § 21-2-386, the local election officials will be obligated to confirm the identity of a voter using several methods, any one of which can lead to the rejection of a ballot. First, the officials are to compare the driver's license or identification card number to the information on file. And, in a particularly problematic requirement, they are to compare the date of birth. This latter requirement of confirming birth dates violates court orders and rolls back any progress accomplished when the legislature adopted H.B. 316 in 2019. Two federal courts in this state previously enjoined Georgia election officials from rejecting absentee ballots on the basis of omitted or erroneous date of birth information, citing the Voting Rights Act, 52 U.S.C. § 10101 (a)(2)(B).⁵⁶ The provision, which certainly violates the Voting Rights Act, simply invites further litigation.

Further, the proposed amendment to O.C.G.A. § 21-2-386 continues the requirement of a signature match. Specifically, the proposed language, in subsection (a)(1)(B), demands that "[t]he registrar or clerk shall also confirm that the elector signed the oath. . . ." Obviously, confirming that the elector signed requires matching the elector's signature on the ballot with the elector's signature on file. So the proponents of this legislation are

⁵⁵ See, e.g. *Ohio State Conf. of the NAACP v. Husted*, 768 F.3d 524 (6th Cir.), stay granted, 135 S. Ct. 42 (2014); *League of Women Voters of N. Carolina v. N. Carolina*, 769 F.3d 224 (4th Cir. 2014). One week after the decision of the United States Court of Appeals for the Fourth Circuit, the United States Supreme Court stayed the mandate with explanation. *North Carolina v. League of Women Voters of N.C.*, 135 S. Ct. 6 (2014). In both the North Carolina case and the Ohio case, because the Court gave no explanation for its stays, it is not possible to understand the Supreme Court's reasoning but the stays are consistent with the Court's general hands-off approach to orders changing election procedures near an election. See Daniel P. Tokaji, *Applying Section 2 to the New Vote Denial*, 50 Harv. Civ. Rights-Civ. Liberties L. Rev. 439, 455-59 (2015).

⁵⁶ See *Democratic Party of Georgia, Inc. v. Crittenden*, 347 F. Supp. 3d 1324, 1339-41 (N.D. Ga. 2018) ("absentee mail-in ballots rejected solely because of an omitted or erroneous birth date must be counted."); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308-09 (N.D. Ga. 2018) ("[a] voter's ability to correctly recite his or her year of birth on an absentee ballot envelope is not material to determining said voter's qualifications under Georgia law.").

imposing an additional hurdle on the local election officials, who will now have to confirm (1) a date of birth; (2) an identification number; and (3) a signature match. That is an unjustifiable burden on both the voter and the counties.

Section 18: Restrictions on line warming

It is absolutely the case that no one may offer anything in return for a vote or a commitment to vote and no one may “electioneer” within 150 feet of a polling place or within 25 feet of a voter waiting in line.⁵⁷ But there is no restriction on offering food and water to voters in line as long as whatever is being offered to the waiting voters is also available to everyone else in the area. The proponents’ proposed amendment O.C.G.A. § 21-2-214 to prohibit providing food and drink is punitive.⁵⁸ Perhaps the proponents are not aware that groups ranging from the Girl Scouts to internationally renowned chef Jose Andres have helped voters exercise patience, tolerance, and respect while waiting in long lines to vote. To prohibit the continuation of that practice is wrong. What we would support, however, is standardization of which activities are permitted and which are not. Particularly during the early vote lead-up to the 2020 General Election, we received reports of differing practices across the state. The message should be clear: line warming—providing food and drink equally to waiting voters and others in the area—is permissible, acceptable, and encouraged as long as providers adhere to clear and understandable rules.

⁵⁷ See O.C.G.A. § 21-2-570 and § 21-2-414.

⁵⁸ We received a report that, on October 12, 2020, at the Eisenhower Board of Elections office in Chatham County, voters waited in the hot sun, without access to water, for over five hours. One older gentleman passed out from the heat. An ambulance arrived to assist but he declined help, saying – with blood on his head – that he wanted to wait to vote. A Fayette County voter, at the Fayette County library, wrote us about the resilience of voters who remained in line for hours outside. He, too, reported that an elderly voter fainted and that paramedics were called to the scene. At the High Museum polling location on Peachtree Street, a middle-aged Black woman fainted after being on line for at least two hours. After receiving treatment from EMTs on the scene, she returned to the line and waited to cast her ballot. And, another Chatham County voter described third-world conditions while she waited: no food, no water, no restrooms, and lines that extended for eight hours. Finally, some apparent Whole Foods workers came with apples, bananas, water, and granola. Of course, under the proposed legislation, anyone who assisted a voter who faints, would violate the law.

Section 19: Restrictions on counting in-county provisional ballots

The proponents' proposed amendment to O.C.G.A. § 21-2-419 will unduly burden lower income voters. The proposal would not allow a voter, properly registered in a county, to cast a provisional ballot at any precinct in the county. Under current law, that provisional ballot would be counted for all races in which the voter was eligible to vote. So, for example, a resident of College Park could cast her ballot in the City of Milton but the only votes that would count would be those for which she could have voted had she voted in her home precinct. Allowing provisional ballots to be cast anywhere in the county is simply a recognition that, in urban areas, it can be difficult to get from one place to another in order to vote within the hours the polls are open and that, in rural areas, it can be difficult for people without access to adequate transportation to travel long distances in order to vote.

Proponents have offered no evidence that allowing voters to cast provisional ballots anywhere in the county in which they are registered has led to any problems whatsoever, let alone problems with allegedly fraudulent ballots—the theoretical problems proponents are apparently attempting to address.

* * *

This theme of disingenuous, unsubstantiated concerns permeates the entire bill. H.B. 531 purports to be a solution to the exceedingly rare problem of voter fraud with the true intention of effectively disenfranchising voters less likely to cast a vote for its drafters. To the extent that H.B. 531 is meant to bolster voter trust in Georgia's elections and democratic principles, it is counterproductive. Instead, the state could choose to run a public relations campaign to convince voters of the security of the system and encourage as many eligible voters as possible participate in elections. That would be a meaningful effort to restore faith in our state's democratic institutions. Instead, Georgians are presented with H.B. 531, which makes it more difficult to vote, especially for Black voters who have historically faced substantial barriers. This legislation breeds cynicism, not confidence.

Sincerely,



Lauren Groh-Wargo