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

IN RE GEORGIA SENATE BILL 202	Master Case No. 1:21-MI-55555-JPB
SIXTH DISTRICT OF THE AFRICAN METHODIST EPISCOPAL CHURCH, *et al.*, *Plaintiffs*, v. BRIAN KEMP, *et al.*, *Defendants*	Civil Action No. 1:21-CV-1284-JPB
GEORGIA STATE CONFERENCE OF THE NAACP*, et al.*, *Plaintiffs*, v. BRAD RAFFENSPERGER, *et al.,* *Defendants*	Civil Action No. 1:21-CV-01259-JPB
THE NEW GEORGIA PROJECT, *et al.*, *Plaintiffs*, v. BRAD RAFFENSPERGER, *et al.*, *Defendants*	Civil Action No.: 1:21-cv-01229-JPB
THE CONCERNED BLACK CLERGY OF METROPOLITAN ATLANTA, INC., et al., *Plaintiffs*, v. BRAD RAFFENSPERGER, et al., *Defendants*.	Civil Action No. 1:21-CV-01728-JPB

OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT
ON FIRST AND FOURTEENTH AMENDMENT LINE RELIEF CLAIMS

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INTRODUCTION

The Court should deny Defendants' motions for summary judgment on Plaintiffs' First Amendment challenge to the line relief ban. This Court has already held that the line relief ban impermissibly burdens expression in the 25-foot Supplemental Zone. The full record supports that holding, and Defendants provide no reason to alter it. The Court should also deny summary judgment as to the 150-foot Buffer Zone because multiple disputes of material fact preclude summary judgment on that claim under any level of constitutional scrutiny.

For similar reasons, the Court should deny Defendants' motions for summary judgment on Plaintiffs' claims under the First and Fourteenth Amendments challenging the line relief ban in the Supplemental Zone as an unconstitutional burden on the right to vote.

ARGUMENT

I. TRIABLE ISSUES OF FACT PRECLUDE SUMMARY JUDGMENT ON PLAINTIFFS' FIRST AMENDMENT CLAIMS.

A. Line Relief Activities Are First Amendment Expression.

The Court has now twice found that Plaintiffs' line relief activities are expressive. In the Court's words:

> [T]he record contains substantial evidence that Plaintiffs intend to convey a message that voting is important and that voters should remain in line to ensure their participation in the democratic process. The evidence is also clear that voters infer "some" message from Plaintiffs' efforts. Even though the voter affidavits frame that message in somewhat different ways, the common thread is that voters

> understand that line warming activities are intended to support and encourage voters who have chosen to exercise their right to vote.

ECF 241 at 31. Defendants cannot meet their demanding burden for summary judgment in the face of the substantial evidence the Court has already recognized, and Defendants offer no reason for the Court to depart from its earlier finding. *See Imaging Bus. Mach., LLC v. BancTec, Inc.*, 459 F.3d 1186, 1192 (11th Cir. 2006) (noting the different standards of review and reversing a district court for improperly commingling the two). Ample evidence supports the Court's finding that Plaintiffs' line relief activities are expressive conduct.[1]

First Amendment protection depends on whether, in context, reasonable people would interpret the conduct as expressing "some sort of message, not whether an observer would necessarily infer a specific message." *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004). Plaintiffs intend their line relief activities to convey the importance of voting, even in the face of obstacles, and thus to celebrate the act of voting in the context of communities that have long endured barriers to the franchise.[2] Voters understand this message and

[1] The Court need not delay ruling on the summary judgment motions pending the Eleventh Circuit's review of the Court's preliminary injunction ruling. *See* ECF 762 at 24 n. 3. The summary judgment standard is different from the preliminary injunction standard. Defendants have a much higher burden in establishing that they are entitled to summary judgment but offer no reason to believe their appeal will be dispositive of their summary judgment motions.

[2] *See* Plaintiffs' Statement of Additional Material Facts ("SAMF") ¶ 54 (Briggins Decl. ¶ 10; Calhoun Decl. ¶¶ 17–18; Cotton Decl. ¶¶ 9–12, 23–24; Dennis Decl. ¶¶

perceive line relief as an expression of encouragement and hope.[3] As in *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, line relief addresses an "issue of concern in the community" in a "traditional public forum." 901 F.3d 1235, 1242 (11th Cir. 2018) *(FLFNB I)*.[4] No additional speech is required to convey Plaintiffs' message. *See* ECF 761-1 at 35; ECF 762 at 25. Moreover, under the terms of the statute, a verbal "offer to give" line relief is also criminalized. O.C.G.A. § 21-2-414(a).

The State's argument that "voters apparently interpreted the conduct in a muddle of ways" concedes the point that voters recognize the conduct as expressing a message. ECF 762 at 25. As this Court has recognized, "a narrow, succinctly articulable message is not a condition of constitutional protection." ECF 241 at 32 (quoting *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 569 (1995)); *see also Holloman*, 370 F.3d at 1270.

6–9; Kinard Decl. ¶¶ 5, 13; Briggins Decl. ¶¶ 10, 12–13; 30(b)(6) Deposition of Delta Sigma Theta Sorority (Rhonda Briggins) ("Delta Dep.") 97:21–100:10; GA NAACP Dep. 48:13–50:4; Woodall Decl. ¶¶ 9–11); SAMF ¶ 56 (Cotton Decl. ¶¶ 9, 23; Calhoun Decl. ¶¶ 17–21; Kinard Decl. ¶¶ 6, 14); SAMF ¶ 411 (30(b)(6) Deposition of Common Cause (Treaunna Dennis) ("Common Cause Dep.") 168:8–22)); SAMF ¶ 414 (Briggins 5/20/22 Decl. ¶ 19).

[3] *See* SAMF ¶ 457 (Bray Decl. ¶¶ 14–16; Clarke Decl. ¶ 9; Sutton Decl. ¶ 8; T. Scott Decl. ¶ 10).

[4] Defendants do not contest that the area around polling centers is a public forum. *See Burson v. Freeman*, 504 U.S. 191, 196 (1992) (area outside polling place is public forum); *Citizens for Police Accountability Pol. Comm. v. Browning*, 572 F.3d 1213, 1218 n.9 (11th Cir. 2009) (same).

Rather than address these facts, Defendants advance arguments that ignore the record. Defendants seize on the Eleventh Circuit's *dicta* that "most social-service food sharing events will not be expressive." *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 11 F.4th 1266, 1292 (11th Cir. 2021) (*FLFNB II*). But not only was the Eleventh Circuit explicit that it was not reexamining *FLFNB I*, *see FLFNB II*, 11 F.4th at 1291, that quotation is inapposite. As the Eleventh Circuit explained, "the context in which a symbol is used for purposes of expression is important, for the context may give meaning to the symbol." *FLFNB I*, 901 F.3d 1241. In the inherently political context of the voting line, Plaintiffs share "food as the means for conveying [their] message." *Id.* at 1243. "[F]ood has specific historical and cultural significance in the context of civil rights activities." ECF 241 at 33; *see also* SAMF ¶ 460 (Bray Decl. ¶ 18; Jackson Decl. ¶¶ 15, 17; Briggins Decl. ¶ 18; Paul Decl. ¶ 7); SAMF ¶ 462 (Bray Decl. ¶¶ 19-20; Jackson Decl. ¶¶ 18-19); SAMF ¶ 467 (Clarke Decl. ¶ 9; Cobham Decl. ¶ 7; Enriquez Decl. ¶¶ 7–8; Gaymon Decl. ¶¶ 14–16; Kinard Decl. ¶¶ 11, 16; Ramirez Decl. ¶ 9; Robinson Decl. ¶¶ 6–8; Scott Decl. ¶ 10; Sutton Decl. ¶ 8; Tharpe Decl. ¶¶ 8–10).

Intervenors next claim that neither "facilitating" voting nor providing "something of value" to incentivize voting are expressive. ECF 761-1 at 36. This argument ignores the nature of Plaintiffs' activities. Plaintiffs are not just facilitating voting; they are also communicating a message about the importance of

voting to communities that have continually faced obstacles to voting. There is no evidence that voters perceive a water bottle to be a bribe. But there is overwhelming evidence that voters perceive line relief as a message of hope and encouragement. *See supra* p. 4 n. 3 & n. 4.

B. The Court Should Apply Strict Scrutiny to the Content-Based Restrictions on Line Relief.

Defendants provide no convincing reason to depart from the Court's previous rulings that the line relief ban is a content-based regulation of speech. ECF 241 at 35–37; ECF 614 at 23 n.15.

1. The Line Relief Ban is Content-Based.

The line relief ban is content-based for two independent reasons: it regulates speech based on the topic and message, and it cannot be justified without reference to the content of the regulated speech.

First, the line relief ban facially restricts expression based on topic and function. "[G]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." ECF 241 at 35 (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)). Defendants do not even engage with the fact that the line relief ban "prohibits a specific category of speech or conduct around a polling place—offering or giving items to voters waiting in line." ECF 241 at 38; *see* O.C.G.A. § 21-2-414(a).

Second, even if it were facially neutral (it is not), the ban's justification

requires reference to the content of the regulated speech. The General Assembly intended the line relief ban to "[p]rotect[] electors from improper interference, political pressure, or intimidation while waiting in line to vote." SB 202 § 2, ¶13. That justification "focuses *only* on the content of the speech and the direct impact that speech has on its listeners." *Boos v. Barry*, 485 U.S. 312, 321 (1988). Even "facially content-neutral laws can nevertheless be content-based if they cannot be justified without reference to the content of the regulated speech." ECF 241 at 37 (quotation cleaned up) (quoting *Reed,* 576 U.S. at 164); *see also id.* at 40.

The Court should again reject Defendants' argument that the line relief ban targets only the "secondary effects" of expressive conduct. *See id.* at 38–39; ECF 614 at 9–11 (refusing to apply "secondary effects" doctrine). The State argues that the record "has now developed sufficiently to show that the law is content neutral" because it targets "voter intimidation and appearance of corruption, that result from *anyone* handing out items of value to voters in line for *any reason*." ECF 762 at 21. But the relevant record has not changed since the Court correctly held the line relief ban was intended to target the direct effect of Plaintiffs' speech on voters. ECF 614 at 22; *see also id.* at 39 (Court's order dated August 18, 2023); ECF 762 at 21 (citing, as the "record" that "has now developed sufficiently," Mr. Germany's declaration dated June 15, 2023). The State's argument also concedes that the line relief ban is justified by reference to the direct effect of the expression on targeted

listeners—rather than its secondary effects on the surrounding community. *Boos*, 485 U.S. at 320; *see also United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813, 815 (2000) (strict scrutiny, not secondary-effects test, applies where, as here, "the designed benefit of a content-based speech restriction is to shield the sensibilities of listeners"). There is also no dispute that the ban prohibits line relief "while it allows other forms of expression to those same voters that do not offer or provide such items" including "commercial solicitation." ECF 241 at 40.

2. The Court Should Apply Traditional Strict Scrutiny.

The line relief ban is subject to strict scrutiny because it is a content-based regulation of speech in a public forum. "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed*, 576 U.S. at 163; *Otto v. City of Boca Raton*, 981 F.3d 854, 861 (11th Cir. 2020). Lower forms of scrutiny are not applicable: intermediate scrutiny under *United States v. O'Brien*, 391 U.S. 367 (1968), applies only to "content-neutral restrictions that impose an incidental burden on speech," not to content-based regulations. *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 661 (1994); *see also O'Brien*, 391 U.S. at 377.[5]

[5] Even if the ban were content-neutral, it would require "exacting scrutiny," as a law that burdens election-related expression. *Meyer v. Grant*, 486 U.S. 414, 424 (1988); *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 184 (1999).

The *Anderson-Burdick* standard is also inapplicable to Plaintiffs' First Amendment claims. As the Court correctly held, ECF 241 at 26–27, *Anderson-Burdick* applies when laws controlling "the mechanics of the voting process" incidentally burden constitutional rights. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 345 (1995). It does not apply where, as here, the election-related statute directly regulates core political speech. *Id.*

3. Disputed Issues of Material Fact Preclude Application of *Burson* Scrutiny.

The Court should not apply *Burson* scrutiny in this procedural posture.[6] *Burson* applies "*only* when the First Amendment right *threatens to interfere with the act of voting itself*." 504 U.S. at 209 n.11 (emphasis added). It "does not apply to all cases where there is a conflict between First Amendment rights and a State's election process" such as a regulation directed at attempts to "influence" voters. *Id.*; *see also Citizens for Police Accountability Pol. Comm. v. Browning*, 572 F.3d 1213, 1221 n.17 (11th Cir. 2009) (holding that *Burson* scrutiny applies "only where the prohibited activity threatens to interfere with the act of voting itself or physically interferes with voters attempting to cast their ballot").

Here, at a minimum, fact issues preclude applying *Burson*. Defendants argue that the line relief ban protects voters from improper influence: "interference,

[6] While Plaintiffs respectfully disagree with the Court's prior application of *Burson*, the Court need not revisit its prior holdings to conclude that *Burson* is inapplicable and genuine disputes of material fact preclude summary judgments.

political pressure, or intimidation." S.B. 202 § 2, ¶ 13, Reg. Sess. (Ga. 2021).[7] But far from interfering with voting, line relief efforts emphasize the importance of voting and provides sustenance for those waiting in long lines. *See* SAMF ¶ 54 (Briggins Decl. ¶ 10; Calhoun Decl. ¶¶ 17-18; Cotton Decl. ¶¶ 9-12, 23-24; Dennis Decl. ¶¶ 6-9; Kinard Decl. ¶¶ 5, 13; Briggins Decl. ¶¶ 10, 12-13; Delta Dep. 97:21-100:10; GA NAACP Dep. 48:13–50:4; Woodall Decl. ¶¶ 9-1); SAMF ¶ 458 (Bray Decl. ¶ 15; Calhoun Decl. ¶¶ 17–18, 38–39; Cotton Decl. ¶¶ 9–12, 23–24; Supp. Jackson Decl. ¶¶ 9–10; Hector Decl. ¶ 7; Honor Decl. ¶ 12; Cobham Decl. ¶¶ 4–6; Kilanko Decl. ¶¶ 6, 8). Defendants present no undisputed or admissible evidence that line relief has interfered with voters casting their ballots. *See Burson*, 504 U.S. at 209 n.11; *see also* Pls.' Resp. SMF ¶¶ 266–68. The activities Defendants do identify—playing music, bringing in performers, setting up tables within the Buffer Zone—are not actually prohibited by the line relief ban. *See* ECF 762 at 7-8; Pls.' Resp. SMF ¶ 253. "[C]reating a circus environment" or giving the impression that political parties were "running the line" are unrelated to the line relief ban and already prohibited under Georgia law. *See* Pls.' Resp. SMF ¶¶ 253–254. Defendants' assertions that the ban prevents voter confusion or enhances voter confidence, *see* ECF 762 at 19, concedes that the ban was not targeted at

[7] All the evidence, of course, indicates that line relief did not improperly influence voters. *See infra* pp. 15-16, § I(C)(2)(a)(1).

preventing direct interference with voting, precluding *Burson*'s application.

While there are superficial similarities between the line relief ban and the statutes at issue in *Burson* and *Browning*, they do not change the analysis. The statute in *Burson* proscribed *soliciting* votes or *campaign* activity within a narrower area of 100 feet of a polling place. *Burson*, 504 U.S. at 192–94. The statute in *Browning* made it illegal to *seek* petition signatures within 100 feet of a polling place. *Browning*, 572 F.3d at 1215. The line relief ban differs from these statutes: the legislators behind the laws in *Burson* and *Browning* believed that partisan and electoral activity interfered with voters' access to the polls and ability to cast their vote free from harassment; here, the evidence shows that line relief supports voting, and there is no evidence of intimidation, or even solicitation.

This factual dispute about whether line relief "interfere[s] with the act of voting itself" precludes applying *Burson* in this posture. *See Burson*, 504 U.S. at 209 n.11; *Browning*, 572 F.3d at 1221 n.17; *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997) ("An issue of fact is 'material' if it is a legal element of the claim under the applicable substantive law which might affect the outcome of the case."). Viewing the facts in the light most favorable to non-movant Plaintiffs, the Court should apply traditional strict scrutiny at summary judgment.

C. The Line Relief Ban Fails Scrutiny Under Any Standard.

The Court should deny summary judgment because Defendants have not

shown that the line relief ban survives strict scrutiny. But even if the Court concludes that standard does not apply, Defendants have not shown that the line relief ban survives *Burson* scrutiny, exacting scrutiny, or intermediate scrutiny.

1. The Line Relief Ban Fails Strict Scrutiny.

Under strict scrutiny, the Buffer and Supplemental Zone bans are "presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed*, 576 U.S. at 163. This Court has recognized the government's interest in "restoring peace and order around the polls, protecting voters from political pressure and intimidation, and supporting election integrity." ECF 241 at 51–52. But neither the Buffer Zone ban nor the Supplemental Zone ban vindicate those interests. There is no evidence that line relief activities improperly influence voters or threaten election integrity. In fact, the evidence shows the opposite. SAMF ¶ 420 (Kidd Dep. 131:2–135:10; Calhoun Decl. ¶ 18; Dennis Line Relief Decl. ¶ 9); SAMF ¶ 421 (Bailey Dep. 140:7–142:10, 146:14–23; Gwinnett Cnty. Williams Dep. 29:1–13, 30:22–32:21); SAMF ¶ 426 (Brower Decl. ¶ 9); SAMF ¶ 432 (SEB Dep. 119:17–22)); SAMF ¶ 464 (Clarke Decl. ¶¶ 7–9; Scott Decl. ¶ 80; Sutton Decl. ¶ 10); SAMF ¶ 465 (Bray Decl. ¶ 11; Gaymon Decl. ¶ 15; Cobham Decl. ¶ 7; Khabani Decl. ¶ 12; Kilanko Decl. ¶ 7; Kinard Decl. ¶ 11; Paul Decl. ¶ 8; Ramirez

Decl. ¶ 8; Griggs Decl. ¶ 11); Pls.' Resp. SMF ¶ 268.[8] And the line relief ban does not prohibit a large swathe of activity that the State claims disturbs polling locations, like playing music, bringing in performers, setting up tables, or other individuals approaching voters in line. *See* ECF 762 at 7–8.

Nor are the Buffer and Supplemental Zone bans the "least restrictive means" of achieving the State's goals. *See Playboy*, 529 U.S. at 827. The conduct that purportedly justifies the bans is already illegal. O.C.G.A. §§ 21-2-414 (prohibiting soliciting votes and distributing or displaying campaign material), O.C.G.A. § 21-2-570 (prohibiting giving or receiving money and gifts for registering a voter or voting for a particular candidate), O.C.G.A. § 21-2-566(3)-(4) (prohibiting interference with voting at the precinct), O.C.G.A. § 21-2-567 (prohibiting voter intimidation). Even the few other states that regulate line relief do not ban it outright. *Compare, e.g.*, N.Y. Elec. Law § 17-140 (allowing distribution of unmarked refreshments valued under one dollar to voters in line); Mont. Code Ann. § 13-35-211 (prohibiting food and water and things of value only within 100

[8] The Court should discount the State's evidence of reported complaints about line relief, many of which were later found to be unsubstantiated. SAMF ¶ 429 (Def's Ex. F (Germany Decl. Exs. D, E, F)); SAMF ¶ 430 (Summary of SEB Meeting, Feb. 7, 2023; SEB Meeting Transcript (Feb. 7, 2023), 147:4–148:19, 191:5–192:7)); SAMF ¶ 431 (Germany Dep. 108:24–109:17)); SAMF ¶ 432 (SEB Dep. 119:17–22).

feet of the precinct entrance); *see also* SAMF 410 (Pettigrew Rep. 27)).[9]

The Supplemental Zone ban is even less tailored and addresses a diminished government interest. The Supplemental Zone ban criminalizes the entire universe of expression at issue and bans expression at an unlimited distance from polling locations and with no fixed boundaries. *See* ECF 614 at 25; SAMF ¶ 466 (Paul Decl. ¶ 12), SAMF ¶ 471 (Germany Decl. ¶ 15). Yet election officials have not received complaints about relief activities in the Supplemental Zone. SAMF ¶ 424 (Athens-Clarke Cnty. Dep. 152:10–14); SAMF ¶ 425 (Kidd Dep. 137:5–10); SAMF ¶ 426 (Brower Decl. ¶ 9).

The government's interest in protecting election-related activity will "necessarily diminish in importance as the distance from the polling place increases." ECF 614 at 26. This sweeping ban impermissibly burdens speech.

2. The Line Relief Ban Fails *Burson* Scrutiny.

Burson requires showing that a restriction on expression is "reasonable" and does not "significantly impinge" on constitutional rights. *Burson*, 594 U.S. at 209. At a minimum, factual disputes preclude summary judgment under this standard.

a. The Buffer Zone ban fails *Burson* scrutiny.

Though the Court declined to preliminarily enjoin the 150-foot Buffer Zone

[9] Intervenors claim that this burden on Plaintiffs' First Amendment rights is only "incidental" to vindicating the State's interests. ECF 761-1 at 31. But the burden on Plaintiffs' First Amendment rights is not collateral damage—the line relief ban directly targets Plaintiffs' expression.

ban, summary judgment is not warranted. *See, e.g.*, *Noramco Shipping Corp. v. Bunkers Int'l Corp.*, 2003 WL 22594419, at *10 (M.D. Fla. Apr. 30, 2003) (a "preliminary ruling on a partial record applying a flexible burden of proof does not provide a basis to avoid a trial on the merits" because the "standard for granting a Motion for Preliminary Injunction is entirely different"). "Summary Judgment should be granted only when the truth is clear, where the basic facts are undisputed and the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts." *Owens v. Kelley*, 681 F.2d 1362, 1365 (11th Cir. 1982). It should be denied where there is a dispute over whether a state law burdening political speech is reasonably tailored to address a compelling state interest. *See VoteAmerica v. Raffensperger*, 2023 WL 6296928, at *10 (N.D. Ga. Sept. 27, 2023). Significant factual disputes remain as to whether the Buffer Zone restriction reasonably targets the harms Defendants identify and the degree to which it burdens Plaintiffs' rights.

(1) The Buffer Zone restriction is not reasonable.

At a minimum, significant factual issues remain regarding whether the line relief ban is reasonably tailored to the harms the State identifies: improper influence and voter intimidation. There is no evidence that providers of non-partisan line relief intend to influence voters' choices. Indeed, all evidence is to the contrary. The State cites at most one suspect complaint that line relief "seemed

unlawful and intimidating." ECF 762 at 8. But local election officials report that they did not see any attempt to influence voters. SAMF ¶ 424 (Athens-Clarke Cnty. Dep. 152:10–14); SAMF ¶ 425 (Kidd Dep. 137:5–10); SAMF ¶ 426 (Brower Decl. ¶ 9). And voters report they did not feel pressure or influence to vote in any particular way. SAMF ¶ 464 (Clarke Decl. ¶¶ 8, 9; Scott Decl. ¶ 80; Sutton Decl. ¶ 10); SAMF ¶ 465 (Bray Decl. ¶ 11; Gaymon Decl. ¶ 15; Cobham Decl. ¶ 7; Khabani Decl. ¶ 12; Kilanko Decl. ¶ 7; Kinard Decl. ¶ 11; Paul Decl. ¶ 8; Ramirez Decl. ¶ 8; Griggs Decl. ¶ 11); Pls.' Resp. SMF ¶ 246. Defendants cite only a single incident based on double hearsay and laced with racial undertones, where Ryan Germany, former general counsel to the Secretary of State, recounts one voter's speculation that other voters looked intimidated by the mere presence of the voting rights and community empowerment organization Black Voters Matter. ECF 762 at 8 (citing Germany Decl. ¶¶ 29–30). While this allegation deserves no material weight, it is also eclipsed by the testimony above.

Defendants also have not shown that existing laws are ineffective in protecting election integrity. They identify no evidence that preexisting laws failed to deter or detect improper electioneering or vote-buying, nor any evidence that the unconditional provision of food or water by volunteers poses a threat to election integrity. And voters and observers report the contrary.

Evidence that line relief efforts offer messages of support to voters in long

lines further rebuts the claim that the line relief ban targets election interference. Indeed, as discussed above, some county election officials did not oppose line relief activities in their counties, and others encouraged and coordinated line relief activities themselves, *see* SAMF ¶ 420 (Kidd Dep. 131:2–135:10; Calhoun Decl. ¶ 18; Dennis Decl. ¶ 9). At a minimum, a dispute of material fact exists about whether the Buffer Zone ban reasonably targets the interests Defendants describe.

(2) The Buffer Zone restriction significantly restricts Plaintiffs' expression.

The Buffer Zone ban also significantly burdens Plaintiffs' First Amendment expression—and, at a minimum, issues of material fact about the scope of this burden preclude summary judgment. The State asserts that the Buffer Zone ban allows multiple ways to communicate "any message" to voters. ECF 762 at 27. But words cannot convey the same message as line relief near a polling station. SAMF ¶ 456 (Briggins Decl. ¶¶ 12–18); SAMF ¶ 457 (Bray Decl. ¶¶ 14–16; Clarke Decl. ¶ 9; Sutton Decl. ¶ 8; Scott Decl. ¶ 10); SAMF ¶ 458 (Calhoun Decl. ¶¶ 17–18, 38–38; Cotton Decl. ¶¶ 9–12, 23–24; Hector Decl. ¶ 7; Honor Decl. ¶ 12; Sutton Decl. ¶¶ 5–9; Scott Decl. ¶¶ 611); SAMF ¶ 460 (Bray Decl. ¶ 18; Jackson Decl. ¶¶ 15, 17; Briggins Decl. ¶ 18; Paul Decl. ¶ 7); SAMF ¶ 461 (Gaymon Decl. ¶¶ 6, 8, 9; Jackson Decl. ¶ 16; Kinard Decl. ¶¶ 8–10). "The act of line relief is special because it sends a message about participation in democracy and the importance of humanitarian assistance in a way that words could not capture." SAMF ¶ 458

(Mayes Decl. ¶ 7–8).

The State also argues the Buffer Zone ban allows "giving out items a few feet away from the protective zones." ECF 762 at 27–28. But food and water booths more than 25-feet outside of the Buffer Zone are not an adequate alternative, as leaving the line to get food or water will typically require voters to surrender their place in the queue, defeating the point of Plaintiffs' expression. *Cf.* SAMF ¶ 459 (Mashburn Decl. ¶ 21). This categorical ban in a large radius around every polling place significantly restricts Plaintiffs' expression. *See Burson*, 504 U.S at 210. At a minimum, factual disputes exist as to whether the Buffer Zone survives *Burson* scrutiny, precluding summary judgment.

b. The Supplemental Zone ban fails *Burson* scrutiny.

Defendants elide the differences between the Buffer and Supplemental Zone bans and do not provide any reason for this Court to disturb its prior holdings that the Supplemental Zone ban fails *Burson* scrutiny. The Supplemental Zone is unlimited in scope; burdens vast, unpredictable swathes of speech; and can (and has) extend far beyond the protected 100-foot area in *Burson*, 504 U.S. at 198–99, and *Browning*, 572 F.3d at 1219. Otherwise reasonable restrictions under *Burson* become "unconstitutional at 'some distance from the polls,'" such that it is "improbable that a limitless Supplemental Zone would be permissible." ECF 241 at 55; ECF 614 at 14–15 (citing *Burson*, 504 U.S. at 210).

The fully developed record continues to support the Court's holding. The Supplemental Zone imposes an extreme burden based on a dubious need. County officials have not received complaints about line relief activities in the Supplemental Zone, where the State's interests "necessarily diminish in importance as the distance from the polling place increases." ECF 614 at 26; SAMF ¶ 424 (Athens-Clarke Cnty. Dep. 152:10–14). And the Supplemental Zone ban amounts to an absolute ban on line relief at any distance from polls.

The State's own witnesses focus primarily on the Buffer Zone in defending the reasonableness of the line relief ban, SAMF ¶ 472 (Germany Dep. 96:7–97:16); (Mashburn Dep. 93:17–95:6)), and those officials who favored a Buffer Zone ban distinguished it favorably from the Supplemental Zone ban, *see* SAMF ¶ 422 (Bailey Dep. 141:7–10; Athens-Clarke Cnty. Dep. 151:22–152:19). Lacking evidence of the necessity or reasonableness of the Supplemental Zone ban, the State instead flips the burden to Plaintiffs to show it is *not* necessary. ECF 762 at 19. That is incorrect as a matter of law. Under *Burson*, the government bears the burden of showing that the statute is reasonable and does not significantly burden First Amendment rights. *Burson*, 504 U.S. at 209. Absent such evidence, the Supplemental Zone ban is impermissible. *See Anderson v. Spear,* 356 F.3d 651, 658 (6th Cir. 2004) (500-foot buffer zone unconstitutional where the state's evidence was "glaringly thin . . . as to why the legislature . . . ultimately arrived at

a distance of 500 feet"); *Russell v. Lundergan-Grimes,* 784 F.3d 1037, 1053 (6th Cir. 2015) (300-foot buffer zone unconstitutional where state "did not present any evidence . . . justifying a no-speech zone nine times larger than the one previously authorized by the Supreme Court [in *Burson]* and offer[ed] no well-reasoned argument" for a restricted area of that size).

The Court should summary judgment as to the Supplemental Zone ban.

3. The Line Relief Ban Fails Exacting or Intermediate Scrutiny.

Even if the Court applies a lower standard of scrutiny, summary judgment is not warranted. If the Court declines to apply strict scrutiny or *Burson* scrutiny, it should still apply exacting scrutiny, because the line relief ban burdens Plaintiffs' election-related expression. *John Doe No. 1 v. Reed*, 561 U.S. 186, 196 (2010). Courts will uphold a restriction on such expression "only if it is narrowly tailored to serve an overriding state interest." *McIntyre*, 514 U.S. at 347.[10] And even if the Court finds that the line relief ban is content-neutral and declines to apply exacting scrutiny, the Court should still apply intermediate scrutiny because the ban restricts expression in a public forum. *See Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984); *FLFNB II*, 11 F.4th at 1294, 1297. Under intermediate

[10] As the Court previously observed, "[i]n some cases, the Supreme Court has referred to 'exacting scrutiny' while describing the standard for evaluating a content-based regulation of speech. However, those opinions use language associated with the strict scrutiny standard. . . . Either way, the appropriate level of review is heightened, and the bar to survive review is high." ECF 241 at 41 n.17.

scrutiny, Defendants must show the ban is "narrowly drawn to further a substantial governmental interest that is unrelated to the suppression of free speech." *Id.* at 1294 (internal quotation marks omitted). An "abundance of targeted alternatives may indicate that a regulation is broader than necessary." *Id.* at 1296.

The line relief ban fails both standards because it burdens substantially more speech than necessary to achieve its objectives. As noted above, all the evidence contradicts the idea that providers of non-partisan line relief intend to influence voters' choices or that voters confuse line relief for improper pressure.[11] At a minimum, there is a genuine dispute of material fact regarding whether the harms Defendants purport to solve with the line relief ban actually exist.

Moreover, an abundance of more targeted alternatives exist to combat the (nonexistent) harms. *See FLFNB II*, 11 F.4th at 1296. There is no evidence that existing bans on electioneering close to polling places, vote buying, and voter intimidation are not already overwhelmingly effective. *See* O.C.G.A. §§ 21-2-414, 21-2-570, 21-2-566(3)-(4), 21-2-567. At least one witness testified that voter education can address the problems the State identified. SAMF ¶ 570 (Kennedy Dep. at 185:18–186:1).

The Supplemental Zone ban is even less tailored. Georgia election officials testified that the ban primarily addresses concerns about the Buffer Zone, not the

[11] *See supra* p. 15, § I(C)(1).

Supplemental Zone. SAMF ¶ 472 (Germany Dep. 96:7–97:16; Mashburn Dep. 93:17–95:6). And as discussed above, county officials have not received complaints about line relief in the Supplemental Zone.

Defendants' contention that Plaintiffs can provide food and refreshments to people elsewhere misses the point. "[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Spence v. State of Wash.*, 418 U.S. 405, 411 n.4 (1974) (quotation marks omitted) (rejecting government's contention that the availability of "thousands of other means . . . for the dissemination" of speaker's message permitted government abridgment of expression). The context of the voting line is also crucial to Plaintiffs' expression. *See, e.g.*, *Project Veritas v. Schmidt*, 72 F.4th 1043, 1064 (9th Cir. 2023) ("foreclos[ing] an entire medium of public expression" fails intermediate scrutiny when it "hamper[s] a speaker's preferred mode of communication to such an extent that they compromise or stifle the speaker's message"). The restriction on feeding the homeless in *First Vagabonds Church of God v. City of Orlando, Fla.*, by contrast, at least allowed plaintiffs to feed the homeless twice a year in reach of 42 public parks. 638 F.3d 756, 761 (11th Cir. 2011). Here, the line relief ban—especially in the Supplemental Zone—does not allow Plaintiffs to provide line relief to voters *at all*.

For similar reasons, the line relief ban is also not a content-neutral,

reasonable time, place, and manner restriction on expression. Such a restriction must still be "narrowly tailored to serve a significant governmental interest and leave open ample alternative channels for communication of the information." *FLFNB I*, 901 F.3d at 1238 (quotation marks omitted); *FLFNB II*, 11 F.4th at 1292 (intermediate scrutiny and reasonable time, place, manner restriction standards "substantially overlap"). The line relief ban restricts *all* of Plaintiff's expression. *See Bd. of Airport Comm'rs of City of L.A. v. Jews for Jesus, Inc.*, 482 U.S. 569, 574–75 (1987) ("[S]weeping ban" on all "First Amendment activities" at Los Angeles International Airport was overbroad under any standard of review).

4. Intervenors Misstate the Standard for a Facial First Amendment Challenge.

Intervenors argue that Plaintiffs' challenge fails as a matter of law because the line relief ban is not "unconstitutional in all possible applications." ECF 761-1 at 45 (quotation marks omitted). This argument misstates the law.[12] A law facially violates the First Amendment when it "punishes a substantial amount of protected free speech, judged in relation to the statute's plainly legitimate sweep." *Virginia v. Hicks*, 539 U.S. 113, 118–19 (2003). This standard invalidates regulations that

[12] Intervenors rely on an out-of-context quotation from a concurrence in a case reversed by the Supreme Court. *See United States v. Martinez*, 736 F.3d 981, 991 (11th Cir. 2013) (Carnes, J., concurring), *cert. granted, judgment vacated*, 135 S. Ct. 2798 (2015). That same concurrence in any event went on to clarify that First Amendment facial challenges "do[] not require a showing that there is no set of circumstances in which the statute could be applied constitutionally." *Id.*

"deter or 'chill' constitutionally protected speech—especially when the overbroad statute imposes criminal sanctions." *Id.* The line relief ban is already chilling Plaintiffs' First Amendment expression: several Plaintiffs have ceased line relief activities because of the criminal penalties. SAMF ¶ 474 (Johnson Decl. ¶ 11; Brown Decl. ¶ 12; Hector Decl. ¶¶ 10, 15, 22). In contrast, Defendants have not offered any evidence that the line relief ban addresses any legitimate pervasive problem. The line relief ban cannot survive a facial challenge.

To the extent Intervenors argue the line relief ban facially does not regulate expression, Intervenors ignore both the text of the law which reaches "offer[s] to give" line relief and that the line relief ban applies only in the context of the voting line. *See* ECF 761-1 at 38–39. The line relief ban does not criminalize "social-service food sharing events," *FLFNB II*, 11 F.4th at 1292—it criminalizes an entire category of expression in the inherently political context of the voting lines.

II. STATE DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT ON NGP PLAINTIFFS' FIRST AND FOURTEENTH AMENDMENT CHALLENGES TO THE LINE RELIEF BAN IN THE SUPPLEMENTAL ZONE.

The line relief ban applies in two zones: the Buffer Zone, which extends to all points within 150 feet of the outer edge of a polling precinct, and the Supplemental Zone, which extends 25 feet around any voter standing in line to vote at any polling place. SB 202 § 33; O.C.G.A. § 21-2-414. In addition to their First Amendment speech claims, NGP Plaintiffs challenge the criminalization of

distributing food and drink in the Supplemental Zone as an unconstitutional burden on the right to vote. That means NGP Plaintiffs' challenge, by definition, applies only to long lines: instances where voting lines extend past the 150-feet Buffer Zone, which typically requires voters to wait an hour or more to vote. SAMF ¶ 412 (Gwinnett Cnty. Manifold Dep. 41:2–5).

The legal standard for right-to-vote claims is clear and well-established: courts "apply the flexible standard from *Anderson* and *Burdick*." *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1351-52 (11th Cir. 2009) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983), and *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)). Under the *Anderson-Burdick* standard, courts must first consider whether and to what extent a challenged law burdens the right to vote. *See Anderson*, 460 U.S. at 789. The "relevant" burdens are "those imposed on persons who are eligible to vote" and impacted by the operation of the state law. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008) (controlling op.); *see also id.* at 199; *id.* at 212–14 (Souter, J., dissenting) (similar); *id.* at 239 (Breyer, J., dissenting) (similar).

Once a court determines the character and magnitude of the burden, it must then consider the strength of the state interests and whether they justify the burden at issue. Laws imposing severe burdens are subject to strict scrutiny, *Norman v. Reed*, 502 U.S. 279, 280 (1992), while burdens that are less severe are subject to a

sliding scale under which the court must "identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule," and must consider both the "*legitimacy* and *strength* of each of those interests." *Anderson*, 460 U.S. at 789 (emphasis added). For any law that burdens voters, even if that burden is less severe, the law must still advance state "interest[s] *sufficiently weighty* to justify the limitation." *Norman*, 502 U.S. at 288–89 (emphasis added).

State Defendants argue that the undisputed facts show that the line relief ban within 150 feet of the polling precinct or in the Supplemental Zone does not burden voting in any meaningful way. But in so arguing, State Defendants disregard both this Court's previous rulings to the contrary and clear evidence in the record that voters will be burdened by this Ban in the Supplemental Zone. When the full record is considered, it becomes evident that there are many material disputes of fact that the Court cannot resolve at this stage. Thus, State Defendants are not entitled to summary judgment on NGP Plaintiffs' claim that the line relief ban in the Supplemental Zone imposes an undue burden on the right to vote in violation of the First and Fourteenth Amendments.

A. NGP Plaintiffs have ample evidence of the burden on voters caused by the Ban in the Supplemental Zone.

Because NGP Plaintiffs only challenge the Ban in the Supplemental Zone, the burden of that provision on the right to vote is naturally related to long precinct lines. As the Court recognized earlier this year, there is plenty of evidence in the

record that voters will experience harm as a result of the Ban in the Supplemental Zone precisely because long lines are likely to continue plaguing voters in Georgia, especially in the upcoming 2024 Presidential elections. ECF 614 at 29–30. According to Blake Evans, the Director of Elections with the Secretary of State's Office, long lines persisted in the December 2022 elections. SAMF ¶ 443 (Evans Dep. 180:19–181:4). County election officials confirmed that lines in the December 2022 elections extended beyond the Buffer Zone, with wait times in many locations during the 2022 runoff election extending over an hour and in some cases up to two hours. *Id.* (Fulton Cnty Dep. 206:22–25; Cobb Cnty. Dep. 169:23–170:3; Pettigrew Rep. 35–36; Gwinnett Cnty. Manifold Dep. 33:18–22, 41:12–14).

Analysis of wait times in Georgia during the 2022 general election support these anecdotal observations from election officials, particularly in larger counties. For instance, 21 of 24 of Fulton County's early voting locations reported lines at least an hour long, and 11 of 16 early voting sites in DeKalb County reported a lines over one hour. SAMF ¶ 444 (Pettigrew Rep. 35; Fulton Cnty Dep. 206:22–25). This historical data about long lines during the 2022 election is highly relevant to predicting lines in future elections, including the upcoming 2024 elections, because voting lines in Georgia tend to be longer in presidential election years. SAMF ¶ 437 (Pettigrew Dep. 187:21–188:1). The Court, persuaded by all this evidence, concluded that the line relief ban in the Supplemental Zone is indeed

harmful to voters. ECF 614 at 30–31.

But evidence of the burdens caused by long lines does not end there. Countless voters relied on food and water provided at the precincts to ease the burdens of standing in hours-long lines during the most recent election. SAMF ¶ 416 (T. Scott Decl. ¶¶ 6–11; Sutton Decl. ¶¶ 5–9; Calhoun Decl. ¶ 18; Cotton Decl. ¶ 10; Briggins Decl. ¶¶ 14–16; Hector Decl. ¶¶ 17–19; C. Johnson Decl. ¶ 9; Honor Decl. ¶ 19; Brown Decl. ¶¶ 6–9). Other voters experienced firsthand how much harder it was to vote because line relief was not available. This includes NGP Plaintiff Elbert Solomon who, because of changes to drop box accessibility under SB 202, decided to vote in person for the December 2022 runoff election and ended up standing in line for an hour and a half. SAMF ¶ 449 (Solomon Dep. 45:2–8). Sandra Reed, a voter from Atlanta, Georgia, had to wait close to two hours without food or drink before voting. SAMF ¶ 450 (Reed. Dep. 13:6–7, 20:12–21:2, 28:18-29:3). She did not know she had to bring her own water, and there was none available to her in line. *Id.* Similarly, Jessica Owens, a voter in Gwinnett County, described her experience in not being able to provide food or water to a friend who was four months pregnant and who waited in line for five and a half hours to vote in the 2022 election. SAMF ¶ 451 (Owens Dep. 14:17–22, 22:2–6, 30:12–31:7). This was in stark contrast to Ms. Owen's experience in 2020, when she was able to provide food and water to that same friend who waited in

line for *nine and a half hours*. *Id.*

Other voters struggle to vote because of physical conditions that make standing for long periods of time difficult. For instance, Erendira Brumley, who chose to vote in person in the runoff election because she did not have enough time to request and return her absentee ballot before the deadline, traveled to a precinct with lines up to 3 hours long when she first attempted to vote. SAMF ¶ 452 (Brumley Dep. at 25:4–19, 40:6–23). The waiting conditions were too arduous for her because she recently had back surgery, and she only managed to vote successfully after her third attempt waiting in a line she could finally bear. *Id.* Another voter, Lorraine Rose, who suffers from sciatica and has fused discs in her spine, struggled to stand in a line that wrapped around the precinct several times. SAMF ¶ 453 (Rose Dep. 32:15–34:4). She ended up having to wait in line for over two hours before voting and recalled the discomfort she felt having to wait for so long, which she tried to alleviate by sitting in the gravel and stretching to address her spine pain. *Id.* Neither of these voters were offered a chair to use while waiting in line to alleviate their discomfort, as groups have stopped providing such relief due to concerns this activity is now criminalized under SB 202. *Cf.* SAMF ¶ 474 (Hector Decl. ¶¶ 10, 15, 22) (Rise ceasing activities to provide chairs to voters in line).

State Defendants do not even attempt to grapple with any of this evidence.

Instead, they put forth a handful of arguments, none of which undermine the existence of factual disputes raised above.

First, State Defendants argue that SB 202 includes provisions aimed at reducing long lines. ECF 762 at 22–23. But other than restating the existence of these laws, State Defendants fail to provide any evidence demonstrating that these provisions have actually led to shorter voting lines. And no such evidence exists, because the provisions State Defendants cite were in place for the 2022 elections, yet, as just described, many voters still encountered burdensome, lengthy lines throughout the last election cycle.

Recognizing that long lines are still prevalent, State Defendants also argue that the Ban does not prevent voters from accessing food and drink because they can access water at self-serve water containers, can obtain food and drink "just a few feet from the line," and can bring their own food and water. ECF 762 at 23 (quoting SEB member Matthew Mashburn). But again, State Defendants do not provide any evidence that these alternatives remedy the burdens voters experience waiting in long lines. And in fact, the record contains evidence that none of these three options are true alternatives to the food and drink traditionally provided by third-party groups to voters in line. Several counties confirmed that they do not, or cannot, provide self-service water receptacles to voters at polling precincts. *See* SAMF ¶ 413 (Cobb Cnty. Dep. 142:23–25; Fulton Cnty. Dep. 214:25–215:8; Hall

Cnty. Dep. 60:12–17; Columbia Cnty. Dep. 62:25–63:3; DeKalb Cnty. Dep. 184:18–22; Kidd Dep. 136:5–15). But even if there is evidence of counties providing these self-service receptacles, it is not clear how any voter waiting in a line that stretches over 150 feet from the polling precinct would have access to that water when they need it the most. Other groups cannot provide refreshment "just a few feet from the line," as the State Defendants suggest is possible, because SB 202 made it a crime to provide food or drink within 25 feet of any voter standing in the Supplemental Zone. O.C.G.A. § 21-2-414(a)(3). And many groups previously engaged in line relief have completely eliminated those programs to avoid criminal penalty. SAMF ¶ 474 (C. Johnson Decl. ¶ 11; Brown Decl. ¶ 12; Hector Decl. ¶ 22). Finally, voters do not always know that they will be standing in line for a long time, and thus there is no guarantee they will bring food and water with them when they go to vote. SAMF ¶ 455 (Brown Decl. ¶ 5–9; Reed. Dep. 28:24–29:3; Owens Dep. 31:4–5).

State Defendants' last-ditch argument—waiting in long lines is part of the normal voting experience and thus is not a cognizable burden, ECF 762 at 14—disregards the Court's previous findings to the contrary, ECF 614 at 30–31 (finding voters are harmed by long lines), as well as undeniable evidence in the record of unreasonable burdens the Ban imposes on voters in the Supplemental Zone.

B. The State has failed to demonstrate its purported interests justify the burdens imposed by the line relief ban.

The State's asserted interest in protecting voters from intimidation, protecting voter confidence in the integrity of elections, and promoting efficient and orderly election administration, ECF 762 at 11, 15–19, do not justify the burden voters experience when forced to stand in long, winding lines for hours on end without access to food, water, or any relief. But even if the court disagrees, the evidence—at a minimum—raises disputes of material fact.

As a preliminary threshold issue, the Court should not consider much of the evidence the State Defendants rely on to justify the line relief ban. In many instances, the State Defendants' evidence is inadmissible hearsay. *See* Fed. R. Evid. 801(c), 802; 805; *e.g.*, Pls.' Resp. SMF ¶¶ 263, 265, 266, 268. In other instances, State Defendants characterize the legislature's rationale for enacting the Ban but rely on improper opinion testimony offered by non-legislators, such as Ryan Germany, Matthew Mashburn, Gabe Sterling, and Lynne Bailey, none of whom are qualified to offer opinion testimony on the purpose of any law. *See* Fed. R. Evid. 602, 701; *e.g.*, Pls.' Resp. SMF ¶¶ 272, 273, 274, 275, 276, 278, 284.

But even if the Court were to consider this evidence, there are material disputes of fact as to whether the harm State Defendants claim to remedy in fact exists. Several county election officials have expressed that they do not understand the need for the Ban, and that they never saw any evidence that those providing

food and water to voters in line were attempting to influence the individuals' votes. SAMF ¶ 424 (Athens-Clarke Cnty. Dep. at 151:22–152:19); SAMF ¶ 425 (Kidd Dep. at 137:5–10); SAMF ¶ 426 (Brower Decl. ¶ 9). State Defendants also fail to point to any evidence of complaints or concerns about line relief activities in the Supplemental Zone. In fact, several county officials admitted to never having received complaints about line relief activities in the Supplemental Zone at all. SAMF ¶ 424 (Athens-Clarke Cnty. Dep. at 151:22-152:19). Absent evidence demonstrating why the ban on food and water needs to extend into the Supplemental Zone, State Defendants are not entitled to summary judgment.

State Defendants also argue that the line relief ban was necessary to create a clear rule about how individuals should behave in approaching voters in line and handing out things of value, ECF 762 at 16–17, but State Defendants fail to provide any evidence demonstrating that the Ban actually provides a clear rule for election officials to implement. Rather, the only evidence State Defendants point to is a statement from Mr. Germany that clear rules *can* ensure that officials apply rules easily. But Mr. Germany does not offer the opinion that the line relief ban itself is a clear rule.[13] And testimony from the State's own witnesses confirm how

[13] State Defendants seek to offer evidence from Matthew Mashburn and Janine Eveler about confusion over the legality of voters receiving food and water at the polling precincts during the 2020 elections. *See* ECF 762 at 16. The Court should disregard this evidence because it is only set out in the brief and not in the State Defendants' statement of undisputed facts in violation of Local Rule 56.1(B)(1).

the Ban does not provide any additional clarity to monitoring polling lines: these witnesses admit that SB 202 still allows anyone to approach a voter in line for other reasons as long as they are not campaigning or offering food and water, and it is "very difficult" and requires a "very fact-dependent inquiry" to determine what is going on when a voter is approached. SAMF ¶ 427 (SEB Dep. 250:21–251:2); SAMF ¶ 428 (7/18/22 Prelim. Inj. Hr'g Tr. 108:25–109:11 (testimony from SEB member Matt Mashburn)).

State Defendants also claim that voters fall victim to intimidation, confusion, and voter interference when food and water is distributed at the precinct, ECF 762 at 17–18, but they rely on pure speculation from government officials in support of this point, rather than testimony from the voters themselves. In any event, the record contains evidence that refutes these assertions. Many voters felt appreciation and gratitude for the water or food handed out, *see, e.g.,* SAMF ¶ 416 (T. Scott Decl. ¶¶ 6–11; Sutton Decl. ¶¶ 5–9; Calhoun Decl. ¶ 18; Cotton Decl. ¶ 10; Briggins Decl. ¶¶ 14–16; Hector Decl. ¶¶ 17–19; C. Johnson Decl. ¶ 9; Honor Decl. ¶ 19; Brown Decl. ¶¶ 6–9), and specifically did not feel pressured to vote for a particular candidate or a particular way in exchange for food and water, SAMF ¶ 464 (Clarke Decl. ¶¶ 8, 9; Scott Decl. ¶ 80; Sutton Decl. ¶ 10).

Finally, with respect to State Defendants' arguments that the line relief ban helps maintain order at the polling precinct, ECF 762 at 18–19, the State does not

dispute that nothing in SB 202—including the Ban—prohibits people from approaching voters in line. SAMF ¶ 427 (SEB Dep. 250:21–251:2). Additionally, nothing about the Ban prevents the activities that State Defendants claim created a circus-like atmosphere around the polling places, including music performers and other such activities. *See* O.C.G.A. § 21-2-414.

In sum, when assessing the true burdens of the Supplemental Zone ban against the State's asserted interests, none the Ban actually furthers, the Court should conclude that Defendants are not entitled to summary judgment.

CONCLUSION

For the foregoing reasons, the Court should deny the State's and Intervenors' motions for summary judgment on Plaintiffs' First and Fourteenth Amendment claims related to line relief.

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Respectfully submitted,

This 19th day of January 2024

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(D)

Pursuant to Local Rule 7.1(D), I certify that the foregoing document was prepared in Times New Roman 14-point font in compliance with Local Rule 5.1(C).

/s/ Davin Rosborough
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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2024, I electronically filed the foregoing with the clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record.

/s/ Davin Rosborough
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