



Respectfully submitted this 14<sup>th</sup> day of June, 2021.

HAYNIE, LITCHFIELD & WHITE, PC

/s/ \_\_\_\_\_  
DANIEL W. WHITE  
Georgia Bar No. 153033  
Haynie, Litchfield & White, PC  
222 Washington Avenue  
Marietta, GA 30060  
(770) 422-8900  
[dwhite@hlw-law.com](mailto:dwhite@hlw-law.com)

***Consented to and joined by the following County Defendants:***

FULTON COUNTY REGISTRATION AND ELECTIONS BOARD, ALEX WAN, MARK WINGATE, KATHLEEN D. RUTH, VERNETTA K. NURIDDIN, and AARON V. JOHNSON, Members of the Fulton County Registration and Elections Board, in their official capacities, RICHARD L. BARRON, Director of the Fulton County Registrations and Elections board, in his official capacity;

By: **OFFICE OF THE FULTON COUNTY ATTORNEY**

/s/ \_\_\_\_\_  
Georgia Bar Number: 775060  
[kaye.burwell@fultoncountyga.gov](mailto:kaye.burwell@fultoncountyga.gov)  
Cheryl Ringer  
Georgia Bar Number: 557420  
[cheryl.ringer@fultoncountyga.gov](mailto:cheryl.ringer@fultoncountyga.gov)  
David R. Lowman  
Georgia Bar Number: 460298  
[david.lowman@fultoncountyga.gov](mailto:david.lowman@fultoncountyga.gov)





Wayne Brown  
General Counsel  
Georgia Bar No. 089655  
AUGUSTA LAW DEPARTMENT  
535 Telfair Street, Building 3000  
Augusta, Georgia 30901  
Telephone: (706) 842-5550  
Facsimile: (706) 842-556  
[rmack@augustaga.gov](mailto:rmack@augustaga.gov)  
[wbrown@augustaga.gov](mailto:wbrown@augustaga.gov)

BIBB COUNTY BOARD OF ELECTIONS, MIKE KAPLAN, HERBERT SPANGLER, RINDA WILSON, HENRY FICKLIN, and CASSANDRA POWELL, Members of the Bibb County Board of Elections, in their official capacities, and JEANETTA R. WATSON, Bibb County Elections Supervisor, in her official capacity, BIBB COUNTY BOARD OF REGISTRARS, VERONICA SEALS, Bibb County Chief Registrar, in her official capacity;

By:

**NOLAND LAW FIRM, LLC**

/s/  
\_\_\_\_\_  
WILLIAM H. NOLAND  
Georgia Bar No. 545605  
[william@nolandlawfirmllc.com](mailto:william@nolandlawfirmllc.com)  
GRACE SIMMS MARTIN  
Georgia Bar No. 279182  
[grace@nolandlawfirmllc.com](mailto:grace@nolandlawfirmllc.com)

CHATHAM COUNTY BOARD OF ELECTIONS, THOMAS J. MAHONEY, MALINDA HODGE, MARIANNE HEIMES, and ANTAN LANG, Members of Chatham; County Board of Elections, in their official capacities, CHATHAM COUNTY BOARD OF REGISTRARS, COLIN MCRAE, WANDA ANDREWS, WILLIAM L. NORSE, JON PANNELL, and RANDOLPH SLAY, Members of the Chatham County Board of Registrars, in their official capacities;

CLARKE COUNTY BOARD OF ELECTION AND VOTER REGISTRATION, WILLA JEAN FAMBROUGH, HUNAID QADIR, ANN TILL, ROCKY RAFFLE, and ADAM SHIRLEY, Members of the Clarke County Board of Election and Voter Registration, in their official capacities, CHARLOTTE SOSEBEE, Clarke County Board of Election and Voter Registration Director, in her official capacity;

By:

**COOK & TOLLEY, LLP**

/s/ \_\_\_\_\_  
Gregory C. Sowell  
State Bar No. 668655  
Cook & Tolley, LLP  
304 East Washington Street  
Athens, GA 30601  
706.549.6111  
[gregsowell@cooktolley.com](mailto:gregsowell@cooktolley.com)

COLUMBIA COUNTY BOARD OF ELECTIONS, ANN CUSHMAN, WANDA DUFFIE, and LARRY WIGGINS, Members of the Columbia County Board of Elections, in their official capacities, COLUMBIA COUNTY BOARD OF REGISTRARS, NANCY L. GAY, Columbia County Chief Registrar, in her official capacity;

By:

/s/ \_\_\_\_\_  
Thomas L. Cathey  
Georgia Bar No. 116622

Of Counsel:  
Hull Barrett, PC  
P.O. Box 1564  
Augusta, Georgia 30903-1564  
(706) 722-4481 (telephone)  
(706) 722-9779 (facsimile)  
[TCathey@hullbarrett.com](mailto:TCathey@hullbarrett.com)

HALL COUNTY BOARD OF ELECTIONS AND REGISTRATION, TOM SMILEY, DAVID KENNEDY, KEN COCHRAN, CRAIG LUTZ, and GALA SHEATS, Members of the Hall County Board of Elections and Registration, in their official capacities, LORI WURTZ, Director of Hall County Elections, in her official capacity;

By: **HALL COUNTY ATTORNEY**

/s/ \_\_\_\_\_  
M. Van Stephens, II  
Georgia Bar No. 679950  
Hall County Attorney  
Hall County Board of Commissioners  
P.O. Drawer 1435  
Gainesville, GA 30503  
770-535-8288  
Fax: 770-531-3972  
Email : [vstephens@hallcounty.org](mailto:vstephens@hallcounty.org)

/s/ \_\_\_\_\_  
Eric P. Wilborn  
Georgia Bar No. 563028  
Stewart, Melvin & Frost, LLP  
Hunt Tower, Suite 600  
200 Main Street  
P.O. Box 3280  
Gainesville, GA 30503  
770-536-0101  
Fax: 678-207-2008  
Email: [ewilborn@smf-law.com](mailto:ewilborn@smf-law.com)



**CERTIFICATE OF COMPLAINT WITH LOCAL RULE 7.1**

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

/s/ \_\_\_\_\_  
DANIEL W. WHITE  
Georgia Bar No. 153033

HAYNIE, LITCHFIELD & WHITE, PC  
222 Washington Avenue  
Marietta, GA 30060  
(770) 422-8900 -

**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2021, I electronically filed

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

SIXTH DISTRICT OF THE :  
AFRICAN METHODIST :

legislation in the State of Georgia, nor do they have any discretion whether to follow the laws passed by the Legislature.

Rather than limiting their lawsuit to the Governor, the Secretary of State, and the State Election Board (“State Defendants”) as the parties responsible for the passage, enactment, and enforcement of the provisions of SB 202, Plaintiffs have

provisions of SB 202. However, nowhere in the phonebook-sized Amended Complaint filed by Plaintiffs have they demonstrated an injury, much less one that is fairly traceable to the actions of the County Defendants. They do not have standing to assert their claims against the counties and cannot achieve it by skipping straight to the third prong of the Lujan test.

Further, even if the Court were inclined to give the Plaintiffs latitude regarding the injury-



controversy, a litigant must establish that he has standing," which requires proof of three elements. *United States v. Amodeo*

i. Plaintiffs have not demonstrated an injury-in-fact

Injury-in-fact is "the first and foremost of standing's three elements." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548, (2015). To prove an injury-in-fact the Plaintiffs must show "a concrete and particularized injury." *Sierra v. City of Hallandale Beach*, 996 F.3d 1110 (11th Cir. 2020), citing to *Lujan*, 504 US at 560 n.1. An



Despite this requirement of a concrete actual or imminent injury, Plaintiffs raise only generalized fears about what they ~~may~~ to



Church spends nearly a page detailing its admirable history of civic participation and voter engagement efforts [Doc. 83, ¶ 33], but then claims it will be having to devote resources to “educating voters across the State about the provisions of SB 202...” [Doc. 83, ¶ 35]. Such claims that organizations may have to use their resources to participate in their already existing missions cannot be the basis for showing of injury-in-fact.

- ii. Plaintiffs have not shown an injury fairly traceable to the County Defendants

To establish standing, in addition to demonstrating an injury-in-fact, Plaintiffs must also show a "causal connection between [the] injury and the challenged action of the defendant—, the injury must be fairly trace[able] to the defendant's conduct." Lewis v. Governor of Ala., 944 F.3d 1287, 1296 (11th Cir. 2019) (internal quotes removed) The crux of Plaintiffs' lawsuit is that with no valid justification—and with little opportunity for any, let alone meaningful, public input and review—the Georgia General Assembly enacted S.B. 202, a sweeping series of provisions that makes it harder, if not impossible, for certain Georgians, including historically disenfranchised groups, to vote [Doc. 83, ¶ 22]. Yet nowhere in the Amended Complaint do Plaintiffs bother to explain how their supposed injuries are traceable to the County Defendants.

Indeed, Plaintiffs devote 10 pages of the Amended Complaint detailing alleged deficiencies with the process of passing SB 202 [Doc. 83, pp. 29 and 30] and 30 pages describing why the legislation crafted by the General Assembly is deficient and burdensome [Doc. 83, pp. 89]. Nowhere do the Plaintiffs allege or demonstrate a causal connection between the harms created by the legislation they seek to overturn and the conduct of the County Defendants. Until the Prayer for Relief at the very end of the Amended Complaint do the Plaintiffs even indirectly address the role of the County Defendants, when they ask the Court to enjoin the Defendants generally from enforcing the provisions of SB 202 or conducting elections using those provisions.

There is little doubt that Plaintiffs felt compelled to include the County Defendants due to the opinion of the 11<sup>th</sup> Circuit in *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) 6 0 Td [(.) (.,Tc 0.122 Tw [(4.3 (uc)Tc 0.1e (

provision, noting that only the 67 county Election Supervisors are responsible for preparing the ballots at 1253.

The result of that ruling has been that some subset of county election officials has been named in most election suits filed in the 11<sup>th</sup> Circuit since then, including at least three other suits currently pending before this Court: *The New Georgia Project et al. v. Raffensperger et al.*, Case No. 21-cv-01229-JPB; *Georgia State Conference of the NAACP et al. v. Raffensperger et al.*, Case No. 1:21-cv-01259-JPB; *Asian Americans Advancing Justice et al. v. Raffensperger et al.*, Case No. 1:21-cv-01333-JPB.

However, simply naming an arbitrary set of county election officials as defendants does not meet the Plaintiff's burden to demonstrate traceability and redressability. "It is the plaintiff's burden to plead and prove causation..." *Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla.*, 641 F.3d 1259, 1266 (11th Cir. 2011). See also *Bischoff v. Osceola Cnty.*, 722 F.3d 874, 878 (11th Cir. 2000) ("The party invoking federal jurisdiction bears the burden of proving standing"). "Article III standing requires that the plaintiff's injury be 'fairly traceable to the defendant's actions and redressable by relief against the defendant.'" *Jacobson*, 974 F.3d 1236, at 1256, citing to *Lewis*, 944 F.3d at 1298, 1301.



the contrary, the Plaintiff AME Church asserts that it





### III. CONCLUSION

Plaintiffs have the burden to clearly plead and prove the basic elements of standing in order to bring claims against the County Defendants in this matter. *Bochese*, supra 405 F.3d at 976. Plaintiffs have not met that burden in their Amended Complaint, even construing the facts alleged by them in their favor.

Plaintiffs have not alleged that actions traceable to the County Defendants have or will imminently cause a concrete injury. Further, even though Plaintiffs appear to have named County Defendants for purposes of redressability under improper interpretation of the 11<sup>th</sup> Circuit Court of Appeals ruling in *Jacobson v. Fla. Secy. of State*, they have failed to demonstrate how the claimed injuries would be redressed by an order enjoining only 11 arb5 (o)-8.2 (i)091 Td [(b)91 Td [ how)-8.5 D.2

Respectfully submitted this 14<sup>th</sup> day of June 2021.







BIBB COUNTY BOARD OF ELECTIONS, MIKE KAPLAN, HERBERT SPANGLER, RINDA WILSON, HENRY FICKLIN, and CASSANDRA POWELL, Members of the Bibb County Board of Elections, in their official capacities, and JEANETTA R. WATSON, Bibb County Elections Supervisor, in her official capacity, BIBB COUNTY BOARD OF REGISTRARS, VERONICA SEALS, Bibb County Chief Registrar, in her official capacity;

By: NOLAND LAW FIRM, LLC

/s/William H. Noland  
WILLIAM H. NOLAND  
Georgia Bar No. 545605  
[william@nolandlawfirmllc.com](mailto:william@nolandlawfirmllc.com)  
GRACE SIMMS MARTIN  
Georgia Bar No. 279182  
[grace@nolandlawfirmllc.com](mailto:grace@nolandlawfirmllc.com)  
Attorneys for Bibb County Defendants

CHATHAM COUNTY BOARD OF ELECTIONS, THOMAS J. MAHONEY, MALINDA HODGE, MARIANNE HEIMES, and ANTAN LANG, Members of Chatham; County Board of Elections, in their official capacities, CHATHAM COUNTY BOARD OF REGISTRAR 0.062Tj 2.5645 (y B)1Tj 2.564 0 Td ( )Tj /TT2 1 T

(404) 3661000 (telephone)  
(404) 361-

COLUMBIA COUNTY BOARD OF ELECTIONS, ANN CUSHMAN, WANDA DUFFIE, and LARRY WIGGINS, Members of the Columbia County Board of Elections, in their official capacities, COLUMBIA COUNTY BOARD OF REGISTRARS, NANCY L. GAY, Columbia County Chief Registrar, in her official capacity

By:

/s/ Thomas L. Cathey  
Thomas L. Cathey  
Georgia Bar No. 116622  
Attorney for Defendant  
Columbia County, Georgia  
Of Counsel:  
Hull Barrett, PC  
P.O. Box 1564  
Augusta, Georgia 30908564  
(706) 7224481 (telephone)  
(706) 7229779 (facsimile)  
[TCathey@hullbarrett.com](mailto:TCathey@hullbarrett.com)



CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7 .1

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

/s/Daniel W. White  
DANIEL W. WHITE  
Georgia Bar No. 153033  
Attorney for Cobb County Defendants

HAYNIE, LITCHFIELD & WHITE, PC  
222 Washington Avenue  
Marietta, GA 30060  
(770) 4228900  
[dwhite@hlwlaw.com](mailto:dwhite@hlwlaw.com)

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2021, I electronically filed the foregoing BRIEF IN SUPPORT OF COUNTY DEFENDANTS' MOTION TO DISMISS