SIXTH DISTRICT OF THE AFRICAN METHODIST EPISCOPAL CHURCH, *et al.*, *Plaintiffs*, v. BRIAN KEMP, Governor of the State of Georgia, in his official capacity, *et al.*, *Defendants*.	CIVIL ACTION FILE NO. 1:21-CV-01284-JPB

"States—not federal courts—are in charge of setting [the] rules" for the electoral process. *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1284 (11th Cir. 2020 (*NGP I*). Yet Plaintiffs ask this Court to interfere with the reasonable election rules established by the State of Georgia. The Court should dismiss the First Amended Complaint because Plaintiffs lack standing and, moreover, have failed to state a claim.

'speculative' about S.B. 202." *Id.* at 5. Plaintiffs misunderstand their burden. Although SB 202 is certainly law, Plaintiffs must nonetheless identify a non-speculative, "certainly impending" injury *to them*. *Clapper*, 568 U.S. at 401.

Plaintiffs have not done so, opting instead to continue speculating that they will divert resources to certain projects at an indeterminate time in the future, relying on assumptions about SB 202's implementation.[1] *See, e.g.*, [Doc (ntation.)]TJEMC /Spp944g9[m Td(. 2r0 Tc 0 r023c66)-62 d

response." *Arcia*, 772 F.3d at 1341. Rather, Plaintiffs confirm that they will continue spending resources on the same activities. For example, Plaintiff AME Church says its core mission includes "encourage[ing] civic participation," "registering voters," and engaging in efforts to "increase voter turnout." [Doc.

injury-in-fact requirement would be rendered a formality.

Third, Plaintiffs challenge electoral processes not traceable to or redressable by State Defendants. For instance, Plaintiffs focus on matters beyond the scope of State Defendants' authority, such as the activities of local election officials. *See, e.g.*, [Doc. 83 ¶¶ 296-98, 302-12] (lines at polling places). Such issues are neither traceable to nor redressable by State Defendants, and therefore cannot provide a basis for standing. *See* [Doc. 87-1 at 8-9]; *see also* *Anderson v. Raffensperger*] (lin0(9)0.5 (0 (lin( ) Tw -3Tra)-835Sub4 *AndersoIPlai-5* 6

[any election-related problem] without waiting for it to occur and be detected within its own borders." *Brnovich*, 2021 WL 2690267, *20. Further, facial challenges to election practices face a high bar because they "must fail where [a] statute has a plainly legitimate sweep." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008). Given these settled standards, n

compelling interests. *S*

with respect to "[l]esser burdens" on the right to vote, "a state's important regulatory interests will . . . justify reasonable nondiscriminatory restrictions." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (cleaned up).

Moreover, casting

Finally, since SB 202 has a "plainly legitimate sweep," *Wash. State Grange*, 552 U.S. at 449, this claim cannot succeed as a facial challenge. Thus, Plaintiffs' 1st and 14th Amendment claim of undue burden should be dismissed.

Nor have Plaintiffs adequately pleaded a claim for discriminatory results under the VRA. As an initial matter, it is an open question whether "the [VRA] furnishes an implied cause of action under § 2." *Brnovich*, 2021 WL 2690267, *22 (Gorsuch, J., concurring). There is no support in Section 2's text or legislative history for Plaintiffs' cause of action, which must be found in the statute Congress enacted. *See Alexander v. Sandoval*, 532 U.S. At 55 0 Td[(s0.9 0 Td111 -2.41)d

[Doc. 94, at 14-15]. Nor do they allege any comparable datapoints that would sufficiently plead racial disparity. *See GBM*, 992 F.3d at 1329-31. Plaintiffs cannot even "clear the hurdle of demonstrating that minority voters are less likely than white voters" to be able to vote due to these provisions. *Id*. at 1329.

This allegation is refuted by *Minn. Voters Alliance v. Mansky*, 138 S. Ct. 1876 (2018), and *Burson v. Freeman*, 504 U.S. 191 (1992) (plurality opinion).

The voting location is a *nonpublic* forum, *see* [Doc. 87-1, at 12, 22], where a speech restriction will be upheld so long as it is “reasonable.” *Mansky*, 138 S. Ct. at 1886 (cleaned up). But whether the line-warming restriction involves a public forum, *see* [Doc. 94, at 21], or a nonpublic one, it is permissible: States may impose facially content-based restrictions in and around polling locations. *See Mansky*, 138 S. Ct. at 1886, 1888 (law prohibiting the wearing of certain political apparel within a polling precinct is permissible so long as its scope is clear); [illegible]

failed to adequately plead a violation of these provisions.

Facilitating elections *is* the service, program, and activity under the ADA and Section 504; the means of providing it is up to policymakers. *Cf. Brnovich*, 2021 WL 2690267, *12. As *Brnovich* held, "courts must consider the opportunities provided by a State's *entire* system of voting when assessing the burden imposed by a challenged provision." *Id.* *13 (emphasis added). ADA regulations, too, state that a public entity is obligated to make its services, programs, or activities—"*when viewed in [their] entirety*"—"readily accessible" to disabled individuals. 28 C.F.R. § 35.150 (emphasis added). But even if the different mechanisms of voting were viewed independently, SB 202 has not deprived disabled voters of participating in the franchise on equal terms.

SB 202 gives disabled voters multiple accessible options. Regarding ***drop boxes***, SB 202's approach readily enables disabled voters to vote in precincts,[3] with absentee ballots, and using drop boxes. Essentially for the same reasons, SB 202's approach to ***mobile voting units*** does not make voting problematic for disabled voters. The same is true of the ***ID requirements for absentee voting***, documents that the disabled easily may obtain.

As for ***early voting during runoff elections***, there is no imposition on

[3] Georgia's Dominion voting machines allow for voters with disabilities to use a variety of accessible voting options without assistance.

form, *is* material to voter eligibility for numerous reasons—all of which State Defendants

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Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing Reply Brief in Support of State Defendants' Motion to Dismiss has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Gene C. Schaerr
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