



# DOJ Lawsuit Against Georgia Election Integrity Act Likely to Fail

## BACKGROUND

Election integrity is an issue for all Georgians, regardless of their political party, and the Georgia General Assembly sought to address this issue through a bipartisan and transparent process that included at least 16 public hearings.<sup>1</sup>

On **March 25, 2021**, following nearly two months of hearings and debate, the Georgia General Assembly passed Senate Bill 202 (SB 202), the Election Integrity Act of 2021.<sup>2</sup> Later that day, Georgia Governor Brian Kemp signed the bill into law, codifying a set of fair and consistent statewide reforms to govern the conduct of elections in Georgia.<sup>3</sup>

**Less than 24 hours after Gov. Kemp signed SB 202 into law**, President Biden condemned the law, stating, “this is Jim Crow in the 21st Century,” and compared the legislation to pre-civil rights voting restrictions that prevented people of color from voting in the South.<sup>4</sup>

On **June 25, 2021**, the newly expanded and re-staffed Civil Rights Division of the U.S. Department of Justice (DOJ) filed a lawsuit against Georgia, making two claims under §2 of the Voting Rights Act (VRA) of 1965 challenging seven of SB 202’s provisions. Both claims are meritless.<sup>5</sup>

Given President Biden’s comments immediately following passage of SB 202, the meritless nature of the claims made in this lawsuit, and the fact that the DOJ is suing Republican-led Georgia but not any Democrat-led states with similar elections laws—such as Connecticut, New York, Rhode Island, and Delaware, the president’s home state—the Biden administration is arguably misusing civil rights laws and taxpayer resources to attack its political opponents.

## BOTTOM LINE

The lawsuit will likely fail because the DOJ has provided no evidence of a discriminatory purpose behind the law and Georgia’s voting process remains “equally open” to all Georgians regardless of race.

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## WHY THE DOJ LAWSUIT WILL LIKELY FAIL

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The DOJ is making two claims under §2 of the VRA challenging seven of SB 202's provisions:

**CLAIM #1:** All seven provisions “were adopted with the purpose of denying or abridging Black citizens’ equal access to the political process...”<sup>6</sup>

### FACTS:

- There is no evidence of a discriminatory purpose behind the new law. The key legal question is whether “the legislature as a whole” acted with racist intent which does not include “partisan motives” or “sincere” beliefs (even if “mistaken”) about the existence of fraud.<sup>7-8</sup>
  - ▶ Here the legislature made clear that its purpose was to boost voter confidence, promote uniformity and efficiency, prevent improper interference, political pressure, or intimidation, and prevent fraud.<sup>9</sup>
  - ▶ Furthermore, there is no evidence these are pretexts for discrimination. A careful review of the legislative history reveals that the General Assembly followed the normal legislative process, holding at least 16 public hearings wherein a wide range of witnesses and experts were allowed to testify and answer questions.
- In addition, many of the challenged reforms were proposed by the Association County Commissioners of Georgia (ACCG), a bipartisan working group representing Georgia’s election directors and counties across the state.<sup>10</sup>

**CLAIM #2:** “Black voters will be disproportionately burdened by the challenged provisions of SB 202.”<sup>11</sup>

### FACTS:

- This claim, even if it were factually true, is legally meritless. The Supreme Court has held that even if a voting regulation has a “disparate impact” on some racial group—even a “statistically significant” one—that is not enough to make the law invalid under §2 of the VRA.<sup>12</sup>
- This disparate impact claim will also fail because any “burden” on voting is small. The Supreme Court has held that, “because voting necessarily requires some effort and compliance with some rules, the concept of a voting system that is ‘equally open’ and that furnishes an equal ‘opportunity’ to cast a ballot must tolerate the ‘usual burdens of voting.’... Mere inconvenience cannot be enough to demonstrate a violation of §2.”<sup>13</sup>

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## BOTTOM LINE

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The DOJ has not shown that SB 202 will do anything more than cause a mere inconvenience, while at the same time, improving the integrity and efficiency of Georgia elections. The fact is that Georgia’s voting process remains “equally open” to all Georgians regardless of race with only minimal burden to voters.



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## The seven challenged provisions include:

- 1** [SB 202, §25, ln. 966-970](#)  
Banning government entities from mailing unsolicited absentee ballot request forms to voters;
- 2** [SB 202, §25, ln. 1037-1043](#)  
Fines on third-party groups that distribute duplicate or follow-up absentee ballot request forms to voters;
- 3** [SB 202, §25, ln. 944-953](#)  
Requiring voters who do not possess a Georgia driver's license or personal identification card to provide a copy of another form of identification such as a utility bill in order to request an absentee ballot;
- 4** [SB 202, §25, ln. 933-936](#)  
Requiring absentee ballot requests to be received 11 days before Election Day;
- 5** [SB 202, §26, ln. 1175-1185](#)  
Limiting the number of drop boxes and prohibiting their use after hours and in the days leading up to the election;
- 6** [SB 202, §33, ln. 1873-1875; 1887-1889](#)  
Banning food and water, other than self-service water available from an unattended receptacle, from being given to persons waiting in line to vote; and
- 7** [SB 202, §34, ln. 1902-1907](#)  
Prohibiting local jurisdictions from counting out-of-precinct provisional ballots cast before 5 p.m. on Election Day.

1. Special Committee on Election Integrity – Archives, Georgia House of Representatives (2021); <https://www.house.ga.gov/Committees/en-US/ElectionIntegrityArchives.aspx>.
2. Georgia General Assembly, "SB 202," (2021), <https://www.legis.ga.gov/legislation/59827>.
3. *Ibid*.
4. Statement by President Biden on the Attack on the Right to Vote in Georgia, White House Briefing Room (Mar. 26, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/03/26/statement-by-president-biden-on-the-attack-on-the-right-to-vote-in-georgia/>.
5. "Justice Department Files Lawsuit Against the State of Georgia to Stop Racially Discriminatory Provisions of New Voting Law," United States Department of Justice (Jun. 25, 2021), <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-georgia-stop-racially-discriminatory>.
6. Plaintiff's Brief, Case 1:21-cv-02575-JPB, Document 1, p. 42 (Jun. 25, 2021).
7. *Brnovich v. DNC*, 2021 WL 2690267, at \*22 (2021).
8. *Id.* at \*21-22.
9. SB 202, §2, <https://www.legis.ga.gov/legislation/59827>.
10. Special Committee on Election Integrity, Georgia House of Representatives, Testimony of Todd Edwards (Feb. 4, 2021), 25:15, [https://www.youtube.com/watch?v=G-vGPpU4rsQ&list=PLlgKJe7\\_xdLV\\_T8UkoYPYEmdWjOBYZDEq&index=365](https://www.youtube.com/watch?v=G-vGPpU4rsQ&list=PLlgKJe7_xdLV_T8UkoYPYEmdWjOBYZDEq&index=365).
11. Plaintiff's Brief, Case 1:21-cv-02575-JPB, Document 1, p. 43 (Jun. 25, 2021).
12. *Brnovich*, 2021 WL 2690267, at \*16.
13. *Brnovich*, 2021 WL 2690267, at \*12.

