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

SAFE AFFORDABLE GEORGIA, INC.,

Plaintiff,

v.

JAMES D. KREYENBUHL, in his official capacity as Chairman of the State Ethics Commission; RICK THOMPSON, in his official capacity as Vice Chairman of the State Ethics Commission; DAVID BURGE, STAN WISE, and DANA DIMENT, in their official capacities as members of the State Ethics Commission; and CHRISTOPHER M. CARR, in his official capacity as the Attorney General of Georgia,

Defendants.

Case No. 1:25-cv-06985-ELR

Judge Elenor L. Ross

REPLY IN SUPPORT OF EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

Defendants' vehicle analogy is spot on. Georgia law gives WBJ Leadership Committee, Inc. ("WBJ") the equivalent of a sports car in a limited access lane for the gubernatorial primary, while relegating Safe Affordable Georgia, Inc. to a slow truck stuck in traffic. Because the vehicles are racing each other to the same finish line—the primary election, the First Amendment requires they have the same "traffic laws," as Defendants put it. Georgia has

seen fit to allow WBJ to operate without a "speed limit" (coordination limit). Therefore, the "speed limit" must be removed for Safe Affordable Georgia, and it must be allowed in the "limited access lane" as well.

While defendants claim there are "dangers" to equalizing the two committees, the Georgia legislature has already determined the "dangers" are not that great when it chose not to subject leadership committees to contribution and coordination limits. The Georgia legislature determined the risk of quid pro quo corruption was not great when it allowed unlimited contributions and coordination between the lieutenant governor and his leadership committee. Georgia is not alone in recognizing these so-called safeguards are unwarranted. Twelve states have no limits on direct contributions to gubernatorial candidates.[1] Because the legislature has made this determination, Defendants cannot point to the prevention of quid pro quo corruption to justify the dichotomy that now exists. There is no legitimate justification for subjecting a committee supporting one candidate to contribution and coordination limits while allowing unfettered campaigning by an opposing committee.

[1] The National Conference of State Legislatures maintains a database of state contribution limits, indicating that for the 2026 cycle Alabama, Alaska, Indiana, Iowa, Mississippi, Nebraska, North Dakota, Oregon, Pennsylvania, Texas, Utah, and Virgina have no contribution limits for gubernatorial races. *See* https://documents.ncsl.org/wwwncsl/Elections/State-Limits-on-Contributions-to-Candidates-2025-2026.pdf (last accessed December 31, 2025)

The Defendants' brief ignores controlling precedent and makes irrelevant factual distinctions. Defendants fail to discuss *Perdue v. Kemp,* 584 F. Supp. 3d 1310 (N.D. Ga. 2022), at all, even though it directly ruled that the unequal campaign finance scheme at issue here is unconstitutional. *Perdue* afforded a remedy to "place both [Safe Affordable Georgia] and [WBJ] under the same contribution limitation for the primary election." *Id*. at 1320. Defendants' failure to address *Perdue* is fatal to their defense of the same scheme here.

Likewise, Defendant's attempted factual distinction of *Davis v. FEC* falls flat. 554 U.S. 724 (2008). *Davis* held that "the unprecedented step of imposing different contribution and coordinated [ ] expenditure limits on candidates vying for the same seat is antithetical to the First Amendment." *Id*. at 743-44. The application of this standard here isn't merely "superficial," as Defendants argue. Op. at 16. *Davis's* holding squarely applies to the differing contribution and coordinated expenditure limits here even if the method of imposing divergent limits differs factually. As *Davis* stated, any law imposing different limits for the same office is "antithetical to the First Amendment" and fails all levels of scrutiny.

Safe Affordable Georgia seeks the correct remedy for this two-tiered funding system. As explained in the Motion, the laws restricting Safe Affordable Georgia's contributions and coordinated expenditures directly

harms it. As with the vehicle analogy, confining Safe Affordable Georgia to a slow vehicle with speed limits (i.e. contribution limits) is the problem. Only lifting those limits can remedy the harm because WBJ has already had the opportunity to coordinate expenditures, for example by prepaying for broadcast commercials. This court cannot order WBJ to stop coordinating or to obtain refunds of prior expenditures. That bell cannot be unrung. Moreover, standing alone, there is nothing unconstitutional about WBJ being unrestricted in its coordination and expenditures. The competitive disadvantage facing Safe Affordable Georgia is constitutionally problematic. Only unshackling Safe Affordable Georgia can remedy the harm.

Defendants incomprehensibly claim Safe Affordable Georgia hasn't suffered an injury "beyond a general legal injury," Op. at 18, and that Plaintiff didn't suffer a "direct penalty." *Id.* at 19. An injunction against a government remedies a legal injury. *Fla. Preborn Rescue, Inc. v. City of Clearwater*, No. 23-13501, __ F.4th __, 2025 U.S. App. LEXIS 31666, *28 (11th Cir. Dec. 4, 2025). Defendants do not deny that the challenged statutes limit Plaintiff's associational and speech rights, nor do they disclaim enforcing these statutes against Plaintiff. Defendants' statement that Plaintiff may "support [ ] Mr. Raffensperger so long as it does not coordinate with him or his campaign committee," acknowledges Defendants will enforce

the coordination and contribution limits against Safe Affordable Georgia. Thus, the legal injury needs to be remedied.

For their final merits argument, Defendants posit that the unfair playing field created by Georgia law shouldn't be remedied until additional evidence of WBJ using its advantage is presented. Op. at 20-21. And Defendants suggest that Raffensperger could seek support from an existing leadership committee to mitigate the harm of not having his own. However, WBJ's actions and that of other leadership committees are not what injures Safe Affordable Georgia. Georgia's creation of an unfair playing field is the constitutional injury. Plaintiff is entitled to a level playing field for the entire election. It would be perverse to force Plaintiff to sit on its hands until after WBJ executes an expenditure plan to obtain a level playing field. And Raffensperger is not required to find a work around of Georgia's unlevel playing field.

Notably absent from Defendants' merits arguments is an actual defense of the unfair playing field created by its two-tiered campaign finance system. In a First Amendment case, it is the government defendants' burden to prove the legitimacy of a challenged law. *FEC v. Ted Cruz for Senate*, 596 U.S. 289, 305 (2022) ("the defendant who seeks to uphold a restriction on protected speech bears the burden of justifying it"). Defendants have failed to justify

the two-tiered campaign finance system, and have not met their burden on the merits.

Defendants next argue that even with the merits against them, an injunction should not issue because the legislature had noble intentions when enacting the campaign finance laws. Op. at 21-23. But good intentions do not justify constitutional violations. *Reed v. Town of Gilbert*, 576 U.S. 155, 165-166 (2015). And the unconstitutional flaw in the law that created a two-tiered system for candidates has been known since this Court decided *Perdue* in 2022. The failure to remedy the flaw calls into question the greater good the Defendants claim the two-tier structure serves. Plus, it is rather obvious from how a leadership committee is allowed to coordinate with its chairman's campaign committee that leadership committees were always intended to operate as de facto campaign committees that only the governor and lieutenant governor may control before a general election.

Defendants also attempt to equate leadership committees to party committees. This argument does not help them. Party committees are subject to the same contribution and coordination limits as an individual donor or PAC. O.C.G.A. § 21-5-41(a). Thus, leadership committees are superior vehicles to parties for campaign expenditures. If the legislature wants to empower parties, allowing parties unlimited coordination would have been the obvious choice. A likely purpose, and certainly a major effect, of creating

leadership committees was to allow unlimited fundraising by only the governor and lieutenant governor for a multi-year period for use in their own races.

Regardless of the legislative intent, when a plaintiff is likely to prevail on the merits of a First Amendment claim, the other prerequisites to a preliminary injunction, like balancing the equities, are usually met. *Otto v. City of Boca Raton*, 981 F.3d 854, 870 (11th Cir. 2020). Defendants' policy arguments behind the law are no obstacle to an injunction. "[A]n ongoing violation of the First Amendment constitutes an irreparable injury." *FF Cosms. FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1298 (11th Cir. 2017). "[N]either the government nor the public has any legitimate interest in enforcing an unconstitutional [law]." *LaCroix v. Town of Fort Myers Beach*, 38 F.4th 941, 955 (11th Cir. 2022).

In First Amendment cases, the liberty to speak freely is the constitutional status quo that is to be maintained during litigation over a statute that limits speech. The balancing of the equities will always favor enjoining a constitutionally void application of a statute. Accordingly, all factors point towards the need to enjoin the laws restricting Safe Affordable Georgia's ability to contribute and coordinate on par with a leadership committee.

The Court should issue a preliminary injunction as requested in Plaintiff's motion.

Dated: January 5, 2026

Respectfully submitted,

/s/ Charles Miller

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned certifies that the foregoing Brief has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Charles Miller
Counsel for Plaintiff