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

SIXTH DISTRICT OF THE AFRICAN METHODIST EPISCOPAL CHURCH, a Georgia nonprofit organization, GEORGIA MUSLIM VOTER PROJECT, a Georgia nonprofit organization, WOMEN WATCH AFRIKA, a Georgia nonprofit organization, LATINO COMMUNITY FUND GEORGIA, a Georgia nonprofit organization, DELTA SIGMA THETA SORORITY, INC., a Washington D.C. nonprofit organization on behalf of 7000+ Sorors residing in Georgia,

Plaintiffs,

v.

BRIAN KEMP, Governor of Georgia in his official capacity, et al.

Defendants.

CIVIL ACTION NO.
No. 1:21-cv-01284-JPB

PLAINTIFFS' OPPOSITION TO MOTION TO INTERVENE

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I. INTRODUCTION

Plaintiffs are nonpartisan, nonprofit organizations in Georgia that share a commitment to protect the right to vote and support voter participation, particularly in Georgia's communities of color. They bring this lawsuit to remedy violations of their constitutional and statutory rights. This lawsuit is about the sacred right to vote, and not for a particular candidate, political party, or partisan advantage.

Georgia has enacted a law—Senate Bill 202 ("S.B. 202")—designed to disenfranchise communities of color and other historically disenfranchised groups. S.B. 202 does so by severely burdening that right, especially for Black voters and other voters of color. By restricting how and when eligible voters may request and cast absentee ballots, slashing the availability of drop boxes and mobile voting units, and reducing the early voting period for runoff elections, S.B. 202 eliminates options for election participation and forces more voters to suffer hours-long lines at polling places on Election Day. And even for voters able to set aside other obligations to stand and wait in those lines, S.B. 202 imposes additional obstacles on their franchise by making it a crime for anyone even to offer them water while queuing, and by discarding voters' ballots—disenfranchising them altogether—if they happen to appear at the wrong precinct. Plaintiffs filed this action to enjoin these new rules,

all of which do violence to the Constitution, the Voting Rights Act, and, indeed, the foundations of our democracy, irrespective of partisan advantage.

The proposed intervenor-defendants are Republican Party organizations—the Republican National Committee, the National Republican Senatorial Committee, the National Republican Campaign Committee, and the Georgia Republican Party (the "Party Organizations")—that wish to defend the challenged practices. The question presented by this motion is whether that cause is sufficient under Rule 24 to require or permit them to interpose themselves into this non-partisan civil rights litigation.

The Party Organizations cannot make the showing necessary for either mandatory or permissive intervention. Their generalized interests are adequately represented by the Defendants, and their redundant involvement would unduly prejudice the prompt disposition of this litigation. The motion should be denied.

II. RELEVANT BACKGROUND

On the heels of ever-growing participation by Georgia voters and historic participation among communities of color, the Georgia General Assembly rushed to pass omnibus legislation intended to suppress the vote in future elections by restricting voting practices relied on by Black voters and other voters of color, and by erecting other deliberate barriers and burdens on the right to vote. Following an opaque process, and ignoring testimony from witnesses who presented well-known

and documented evidence that the proposed restrictions would severely deny or burden voting rights, especially among communities of color, the Georgia General Assembly passed and Defendant Georgia Governor signed the 98-page omnibus legislation, S.B. 202, into law on March 25, 2021.

Among other restrictions, S.B. 202 imposes drastic new identification requirements for absentee voting; limits how and when a voter may apply for an absentee ballot; arbitrarily restricts the use of secure absentee drop boxes; limits how voters may arrange to have their completed absentee ballots returned; eliminates mobile polling places; reduces the early voting period during runoff elections; invalidates certain valid ballots without exception if they were cast at the wrong precinct, even if they were cast in the right county; and bans anyone from offering voters forced to wait in long lines any form of food or drink, including water.

Plaintiffs filed this lawsuit against the relevant Georgia election officials and elected officers ("Defendants") on March 29, 2021, to enjoin the provisions addressed above on grounds that they: purposefully deny or abridge the right to vote of otherwise eligible voters on account of race or color in violation of the Fourteenth and Fifteenth Amendments to the U.S. Constitution, as well as Section 2 of the Voting Rights Act of 1965 ("VRA"), 52 U.S.C. § 10301; disproportionately deny or abridge the right of voters of color of an equal opportunity to participate in the

political process in violation of Section 2 of the VRA; impose undue burdens on the right to vote in violation of the First and Fourteenth Amendments to the U.S. Constitution; and unconstitutionally burden Plaintiffs' First Amendment rights of speech and expression. *See* Compl., ECF 1, ¶¶ 242-264.

The Party Organizations moved to join the case as defendants on April 12, 2021. *See* Mot. to Intervene, ECF 38. They claim that by intervening they will "affirmatively seek to preserve" the challenged practices by offering "a unique and well-informed perspective to the table." Mem. of Law in Support of Mot. to Intervene, ECF 38-1 ("MTI") at 9.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 24 governs whether a non-party may intervene into pending litigation. To intervene as of right, the non-party bears the burden to satisfy each of four elements: (1) it must file a timely application; (2) it must have a cognizable "interest relating to the property or transaction which is the subject of the action"; (3) it must be "so situated that disposition of the action, as a practical matter, may impede or impair [its] ability to protect that interest"; and (4) its interests must be "represented inadequately by the existing parties to the suit." *Stone v. First Union Corp.*, 371 F.3d 1305, 1308–09 (11th Cir. 2004) (citing Fed. R. Civ. P. 24(a)).

Where a nonparty cannot intervene as of right, it can seek to intervene permissively, provided its application is (1) timely, and (2) implicates a common question of law or fact. *Cox Cable Commc'ns v. United States*, 992 F.2d 1178, 1180 n.2 (11th Cir. 1993). But a District Court has broad discretion to deny permissive intervention, "even if both of these requirements are met." *Id.* And because Rule 24 requires a court to consider whether permissive intervention "will unduly delay or prejudice the adjudication of the original parties' rights," Fed. R. Civ. P. 24(b)(3), courts properly deny intervention from qualified intervenors when adding new parties will prejudice the "prompt disposition" of the original "controversy." *Fox v. Tyson Foods, Inc.*, 519 F.3d 1298, 1302, 1305 (11th Cir. 2008).

IV. ARGUMENT

The Party Organizations have no basis to intervene by right to protect any distinct lawful interest, nor any interest not already adequately protected by the Defendants. The Court also should not exercise its discretion to allow the Party Organizations to intervene permissively, which would only inject redundancies and prolong litigation, especially when the Party Organizations' only stated purposes for intervention could be accomplished just as completely and with less disruption through participation as *amici curiae*.

A. The Party Organizations Are Not Entitled To Intervene By Right.

The Party Organizations have not carried their burden to establish the elements required to support intervention by right.

1. The Party Organizations have only generalized interests that are legally insufficient to support intervention.

Intervention as of right only extends to parties with a "significantly protectable interest" in the subject litigation. *Donaldson v. United States*, 400 U.S. 517, 531 (1971). Applying this rule, the Eleventh Circuit has held that the interest must be "direct, substantial, [and] legally protectable." *Huff v. Comm'r*, 743 F.3d 790, 796 (11th Cir. 2014) (quote omitted). This means it must reflect a lawful purpose that "the *substantive* law recognizes." *United States v. S. Fla. Water Mgmt. Dist.*, 922 F.2d 704, 710 (11th Cir. 1991). And the interest must be distinguishable from interests "shared with all . . . citizens," meaning it must exceed a "general concern" with how the "result" of the litigation might affect the movant. *Athens Lumber Co., Inc. v. Fed. Election Comm'n*, 690 F.2d 1364, 1366 (11th Cir. 1982).

The Party Organizations do not proffer any interest that meets this standard. To the extent they predicate their proposed intervention upon a desire to "preserve" the challenged practices, enforce "adherence" to those practices, and generally "ensur[e] that the State's election procedures are fair and reliable," MTI at 5, 6, 9, the Party Organizations fail to distinguish themselves from any member of the

general public who similarly hopes that S.B. 202 survives this litigation. The Eleventh Circuit denied intervention as of right on these same grounds in *Athens Lumber*. 690 F.2d at 1366. In that case, it rejected a labor union's request to intervene in litigation challenging an election law because the labor union presented only a "general concern" that the "result" of the litigation might affect its success in the political arena, which was an interest "shared" by "all citizens concerned about the ramifications" of the lawsuit. *Id.*; *see also Smith v. Cobb Cty. Bd. of Elecs. & Regs.*, 314 F. Supp. 2d 1274, 1312–13 (N.D. Ga. 2002) (denying motion to intervene by right in voting rights litigation where movant's interest was shared by "all Cobb County voters" and "not unique to the putative intervenors").

For the same reason, federal courts have denied intervention for political parties and organizations seeking to join lawsuits based on generalized interests in "fair" elections. A court in the Western District of Wisconsin, for example, rejected the exact same argument in *One Wisconsin Institute, Inc. v. Nichol*, 310 F.R.D. 394 (W.D. Wis. 2015). Considering partisan legislators' motion to intervene in that non-partisan civil rights case, the court explained that "Rule 24 is not designed to turn the courtroom into a forum for political actors" to vindicate the laws they support, and held that neither a general interest "in defending" challenged election laws, nor a general interest in "fraud-free elections" sufficed to support intervention. *Id.* at

397; *see also United States v. State of Alabama*, 2006 WL 2290726, at *3 (M.D. Ala. Aug. 8, 2006) (denying intervention by Democratic leaders based on interest in "fair and adequate" elections in voting rights case).

The Party Organizations cannot overcome this defect by recasting their general interest as a "distinct" one based upon their "specific" desire to win elections. *Cf.* MTI at 5-6. If the Party Organizations' argument is that their ability to win elections depends on "fair and reliable" election processes, which they believe the challenged provisions provide, then this argument merely restates generalized interests in upholding S.B. 202; that is legally inadequate to support intervention. *Athens Lumber*, 690 F.2d at 1366. If, on the other hand, the Party Organizations' argument is that the challenged provisions operate to skew the electorate in their favor by excluding otherwise qualified voters from casting ballots, then their interest in preserving "unconstitutional conditions" is illegitimate and not a "legally protected interest" that could justify intervention at all. *Harris v. Pernsley*, 820 F.2d 592, 601 (3d Cir. 1987); *see also Stotts v. Memphis Fire Dep't*, 679 F.2d 579, 582 (6th Cir. 1982) (holding that an interest in "the result of discriminatory" practices supplies "no legally cognizable interest" sufficient to support intervention); *Kirkland v. N.Y. State Dep't of Corr. Servs.*, 711 F.2d 1117, 1126 (2d Cir. 1983) (same).

The Party Organizations cite no controlling Eleventh Circuit authority that changes this analysis. They cite *Siegel v. LePore*, 234 F.3d 1163, 1169 n.1 (11th Cir. 2000) (*see* MTI at 6), but that case offered no opinion on intervention. That case, which dealt with the 2000 Florida Presidential election recount, also involved a dispute *between* political parties over election *conduct*, and included "no state defendants," *id.*, unlike the case here. By contrast, this case presents a private civil rights action challenging the legality of election rules and names only government defendants. And contrary to the Party Organizations' representation, Judge Jones' emergency order in *Black Voters Matter Fund v. Raffensperger*, No. 1:20-cv-04869-SCJ, ECF 42 at 5 (N.D. Ga. Dec. 9, 2020) (cited MTI at 5) only addressed *permissive* intervention under Rule 24(b), and did not address whether the generic and partisan interests the Party Organizations offer here would be sufficient for intervention as of right under Rule 24(a). The Party Organizations' reliance on *Shays v. F.E.C.*, 414 F.3d 76, 88 (D.C. Cir. 2005), is similarly misplaced. *Cf.* MTI at 6. That decision was not about intervention at all, holding only that *plaintiffs* had *standing* to "demand adherence" to the law at issue. 414 F.3d at 88.

Because they have no direct, nongeneralized, lawful interest in the litigation, the Party Organizations' motion to intervene as of right must be denied.

2. This action poses only speculative threats to the Party Organizations' generalized interests.

Even if the Party Organizations' general interests in preserving the challenged provisions were sufficient to satisfy the first element for intervention as of right, they fail to carry their burden to establish how an adverse outcome in this litigation would certainly—or even likely—impair those interests. The mere "suggestion" that a movant's "future" interests "may be impaired is too speculative to support intervention." *Meadowfield Apartments, Ltd. v. United States*, 261 F. App'x 195, 196 (11th Cir. 2008). Applying this rule, the Northern District of Florida denied intervention to Members of Congress in a voting rights case, holding that, because their districts were "not the subject of a constitutional challenge," "the possibility of a remedy that would impair their interests" was "no more than speculative." *Johnson v. Mortham*, 915 F. Supp. 1529, 1538 (N.D. Fla. 1995).

The Party Organizations are similarly "affected only speculatively," if at all, "by the present action." *In re HealthSouth Corp. Ins. Litig.*, 219 F.R.D. 688, 691–92 (N.D. Ala. 2004) (denying intervention for this reason) (citation omitted). The ramifications for the Party Organizations if Plaintiffs prevail at striking down the challenged provisions of S.B. 202 are unknown. Although the Party Organizations assert that such an outcome would generate "inevitable confusion" and "undermine confidence" in Georgia elections, MTI at 7, they provide no evidence to support this

naked conjecture, or explain how either of those results would actually "impair" their interests. For this reason too, the Court must deny intervention by right.

3. The Party Organizations cannot rebut the presumption that the Defendants will adequately protect their interests.

The Eleventh Circuit instructs lower courts to "presume that a proposed intervenor's interest is adequately represented when an existing party pursues the same *ultimate objective* as the party seeking intervention." *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 215 (11th Cir. 1993) (emphasis added). Overcoming that presumption requires a movant to "present some evidence to the contrary." *Stone*, 371 F.3d at 1311. And when the existing party on the proposed intervenor's side of the case is a governmental entity, a movant must go further to "make a *strong* showing of inadequate representation" to overcome the presumption. *Burke v. Ocwen Fin. Corp.*, 833 F. App'x 288, 293 (11th Cir. 2020) (emphasis added) (quote omitted).

The Party Organizations have failed to meet the burden required by this standard. There is no daylight between their attested desire to "preserve" and defend the challenged provisions of S.B. 202 and the Defendants' legal obligation under Georgia law to do the same. *See* O.C.G.A. § 45-15-2(6). The Party Organizations present no evidence to suggest otherwise. They are, instead, situated in the same position as the rejected intervenors in *Athens Lumber*, whose desire to "uphold the

constitutionality" of a challenged federal statute was "adequately represented by the FEC" because "both" had "precisely the same objective." 690 F.2d at 1366–67. The Eleventh Circuit rejected intervention on the same grounds in *Sierra Club, Inc. v. Leavitt*, 488 F.3d 904 (11th Cir. 2007), where the proposed intervenor defendant and the named federal defendant each had the "mutual interest . . . to defend the legality" of the challenged law and "nothing in the record . . . cast doubt upon the will of the [federal defendant] to defend [its] legality." *Id.* at 911 (cleaned up).

Form, not substance, underlies the Party Organizations' unsubstantiated assertions to the contrary. Although they claim that the Defendants' obligations to pursue the public interest necessarily precludes the Defendants from protecting the Party Organizations' "particular interests," MTI at 8, the Party Organizations do not demonstrate *how* their particular interests *in this litigation* differ in substance from the Defendants' obligations to defend the challenged provisions. While the Party Organizations may well have distinct *motivations* for defending S.B. 202, "[a] putative intervenor does not have an interest not adequately represented by a party to a lawsuit simply because it has a motive to litigate that is different from the motive of an existing party." *Nat. Res. Def. Council, Inc. v. N.Y. State Dep't of Envtl. Conservation*, 834 F.2d 60, 61–62 (2d Cir. 1987); *accord* C. Wright & A. Miller, 7C Fed. Prac. & Proc. Civ. § 1909 at n.35 (3d ed. 2021).

The test instead is whether the intervenor shares the same "ultimate objective" as the existing party. *Fed. Sav. & Loan*, 983 F.2d at 215. The Eleventh Circuit accordingly rejected the Party Organizations' position in *Athens Lumber*, refusing to credit the movant's argument that "a public agency charged with protecting the public interest cannot represent adequately private interests" because the movant and the government defendant shared the "same objective." 690 F.2d at 1366–67.

Proposed intervenor-defendants—like political parties generally—regularly encounter this problem, and district courts do not hesitate to reject their motions to intervene by right. *See, e.g.*, *Democracy N. Carolina v. N. Carolina State Bd. of Elections*, 2020 WL 6591397, at *1 (M.D.N.C. June 24, 2020) (holding that proposed Republican Party intervenors' interests in defending voting laws were "undoubtedly protected by the legislature and other individuals that enacted the rules in the first instance"), *aff'd on recons.*, 2020 WL 6589359 (M.D.N.C. June 30, 2020); *Feehan v. Wisconsin Elections Comm'n*, 2020 WL 7182950, at *6 (E.D. Wis. Dec. 6, 2020) (denying Democratic National Committee's motion to intervene in lawsuit to decertify Wisconsin's electoral college results because it had "the same goal as the defendants and ha[d] identified no right independent of the defendants"); *Common Cause R.I. v. Gorbea*, 2020 WL 4365608, at *3 n.5 (D.R.I. July 30, 2020) (rejecting state Republican Party's rationale "to see that existing laws remained

enforced" because "[t]hat is the same interest the defendant agencies are statutorily required to protect"); *One Wis. Inst.*, 310 F.R.D. at 398-99 (same); *cf. Smith*, 314 F. Supp. 2d at 1312–13 (rejecting motion to intervene by right as plaintiffs when movants "failed to present sufficient evidence" that "they can better represent the interest of the voters" than "the elected officials who are the plaintiffs").

Because the Party Organizations share the same interests and ultimate objectives as the Defendants, and because they have presented no evidence to demonstrate the inadequacy of those parties' representation, intervention as of right must be denied for this reason, as well.

B. Permissive Intervention Is Not Warranted.

The Party Organizations also request permissive intervention pursuant to Rule 24(b). Rule 24(b) provides the Court with substantial discretion to "balance" the interests of proposed intervenors against the risk that intervention would "unduly delay or prejudice the adjudication of the rights of the original parties." *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 380 (1987) (quoting Fed. R. Civ. P. 24(b)). Plaintiffs oppose the Party Organizations' request for all of these reasons set out above, and for two additional reasons: (1) permissive intervention would unduly delay and complicate an action that requires expedition and already includes 86 defendants, and (2) permissive intervention would not aid the judicial process in

any way that could not be obtained less onerously by the Party Organizations participating in the case at appropriate points by submitting briefs as *amici curiae*.

1. Permissive intervention would delay the prompt resolution of this litigation.

Adding the Party Organizations—who have only demonstrated that they will echo the substantive positions advanced by the Defendants—will "unduly prejudice" the orderly litigation of this case. Fed. R. Civ. P. 24(b)(3).

This case requires expedition in order to allow Plaintiffs to obtain relief in a timely fashion as elections continue throughout Georgia. As it stands, Plaintiffs will need to take and respond to discovery from each of the Defendants, as well as their experts, their employees, and custodians. At trial, Plaintiffs and each of the Defendants will make motions, raise objections, offer arguments, question witnesses, and seek to enter their own evidence and testimony.[1] These demands will already consume significant judicial resources, and the addition of four new parties who share the same interests and objectives as Defendants will only compound the burdens they place on the parties and the Court.

[1] To the extent the Party Organizations insist that they will not require additional discovery, motions practice, trial testimony, etc., they make all the more clear that their interests are the same as the Defendants' interests.

The Party Organizations do not present any countervailing interest that justifies the "inevitabl[e] delays" and certain impositions the permissive "introduction of additional parties" would create. *Athens Lumber*, 690 F.2d at 1367. To the contrary, the Party Organizations' proposed Answer (ECF 86-2) and motion to intervene (MTI at 10) confirm their plan to duplicate the Defendants' basic positions in a manner that all but guarantees the "accumulati[on]" of "arguments" that fail to "assist[] the court" by providing any new substantive contentions. *Allen Calculators v. Nat'l Cash Register Co.*, 322 U.S. 137, 141–42 (1944); *see also ManaSota-88, Inc. v. Tidwell*, 896 F.2d 1318, 1323 (11th Cir. 1990) (proper to deny permissive intervention that "would severely protract the litigation").

Under materially identical circumstances, the Eleventh Circuit found it proper in *Athens Lumber* to deny permissive intervention to would-be intervenors that supplied only redundant "general" arguments to defend the constitutionality of the challenged election law. 690 F.2d at 1367. Lower courts in this and other circuits have done the same, particularly in cases involving voting rights and constitutional litigation. *See, e.g.*, *Smith*, 314 F. Supp. 2d at 1313 (denying redundant intervention in voting rights case); *Lacasa v. Townsley*, 2012 WL 13069998, at *2 (S.D. Fla. July 6, 2012) (denying Democratic Caucus of Florida's motion to intervene in Florida election dispute because it did not have an interest "separate and apart" from the

defendants); *Wollschlaeger v. Farmer*, 2011 WL 13100241, at *3 (S.D. Fla. July 11, 2011) (denying "duplicative" permissive intervention in constitutional litigation); *Democracy N. Carolina*, 2020 WL 6591397, at *2 (denying redundant intervention that would result in "inefficiencies and undue delay"); *Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236, 258-59 (D.N.M. 20018) (same); *Ansley v. Warren*, 2016 WL 3647979, at *3 (W.D.N.C. July 7, 2016) (same); *see also First Nat'l Bank of Tenn. v. Pinnacle Props. V, LLC*, 2011 WL 13221046, at *4 (N.D. Ga. Nov. 1, 2011) (denying permissive intervention as "duplicative" where movant "asserts the same position" as defendant).

2. The Party Organizations could adequately and less intrusively participate as *amici curiae*.

Where a proposed intervenor "presents no new questions, [it] can contribute usually most effectively and always most expeditiously by a brief amicus curiae and not by intervention." *S. Carolina v. N. Carolina*, 558 U.S. 256, 288 (2010) (Roberts, C.J., concurring in judgment in part and dissenting in part) (citation omitted)). Plaintiffs thus also object to permissive intervention because the Party Organizations can participate in this case as *amici curiae*—and Plaintiffs will not object to such participation at appropriate points in the litigation.

"Courts often treat *amicus* participation as an alternative to intervention." *Id.* (citation omitted). For example, in *Smith*, Judge Carnes rejected intervention as of

right and permissive intervention in a voting rights case, but invited the rejected intervenors "to appear as *amici curiae*." 314 F. Supp. 2d at 1313. So, too, in *Piedmont Heights Civic Club, Inc. v. Moreland*, 83 F.R.D. 153, 159 (N.D. Ga. 1979), Judge O'Kelley denied permissive intervention because the movant's interests could be better and less intrusively represented as *amicus curiae*. *See also Stuart v. Huff*, 706 F.3d 345, 355 (4th Cir. 2013) (affirming the denial of permissive intervention but inviting the appellants to "present their views in support of the Act by seeking leave to file amicus briefs"); *Stupak-Thrall v. Glickman*, 226 F.3d 467, 475-77 (6th Cir. 2000) ("right to participate as amici curiae is both meaningful and adequate" for applicants with same "ultimate goal").

The Party Organizations suggest no reason why participation as *amici* would not satisfy their limited general interests in this case, or their desire to offer "a unique and well-informed perspective" in support of S.B. 202. MTI at 9. For this reason, too, the Court should exercise its discretion to deny permissive intervention.

V. CONCLUSION

The Party Organizations have only demonstrated a generalized interest in this litigation and are adequately represented by the existing Defendants. The motion to intervene by right accordingly must be denied. The Court should also exercise its

discretion to deny permissive intervention, which would only duplicate issues and unduly prejudice the progress of this case.

Respectfully submitted, this 26th day of April 2021.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of L.R. 5.1, using font type of Times New Roman and a point size of 14.

Dated: April 26, 2021

/s/ *Adam S. Sieff*
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CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2021, I electronically filed this document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

Dated: April 26, 2021

/s/ *Adam S. Sieff*
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