

seal certain portions of Ex. 20 and 23, attached to the Declaration of Cassandra N. Love-Olivo (“Love Declaration”) in Opposition to Defendant’s Motion for Summary Judgment (“Opposition”), filed concurrently herewith.¹

This Motion is made on the grounds that the above referenced exhibits contain personal information about third party individuals over which those individuals maintain substantial privacy interests and associational privilege claims—specifically their names and personal addresses as they relate to their membership in Plaintiff Organizations. Accordingly, Plaintiffs respectfully move to:

- File under seal and/or redact references to third party individuals’ identifying information, including their personal addresses and names,² contained in Ex. 20, the Declaration of Treanna Dennis, the Corporate Representative of Plaintiff Common Cause (“Dennis Decl.”) and Ex. 23, the Declaration of Julie Bolen, the Corporate Representative of Plaintiff League of Women Voters (“Bolen Decl.”).

This Motion is based upon this Notice of Motion, the Memorandum of Law in Support, and the Declaration of Cassandra N. Love-Olivo filed concurrently herewith, alongside Plaintiffs’ Opposition to Defendant’s Motion for Summary Judgment, Dennis Declaration, Bolen Declaration, and Love Declaration attaching

¹ Unless otherwise noted herein, all references to “Ex.” refer to those Exhibits attached to the Love Declaration.

² Plaintiffs are entitled to redact the “[h]ome addresses” of individuals. *See* N.D. Ga. L.R. App. H, Exh. A(II)(I)(1)(e). Because Plaintiffs rely on these addresses for their argument, Plaintiffs want to ensure that the Defendant and the Court has the ability to see the particular addresses, but that the addresses remain sealed from the public’s view.

Ex. 1-40. This Motion is further based upon all other pleadings in this proceeding, all other matters of which the Court may take judicial notice, and any other evidence that may be presented to or considered by the Court prior to its ruling. Defendant does not oppose this Motion.

Dated this 26th day of April 2023.

Respectfully submitted,

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identities and addresses of particular members to support their claim of associational standing.

The Organizational Plaintiffs vehemently disagree that associational standing requires the organization to “name names,” especially when, like here, each Organization has dozens—if not hundreds—of members in each challenged district. *See* Opposition at 5-11 (quoting *Fla. State Conf. of N.A.A.C.P. v. Browning* (“*Browning*”), 522 F.3d 1153, 1161 (11th Cir. 2008) (recognizing that the Circuit does not “require[] that the organizational plaintiffs name names” where the harm is prospective)). The Organizational Plaintiffs object not only on legal grounds, but also in the interest of their members’ personal safety because compelled disclosure could subject them to “economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility.” *Nat’l Ass’n for Advancement of Colored People v. State of Ala. ex rel. Patterson* (“*NAACP v. Alabama*”), 357 U.S. 449, 462 (1958).

Nevertheless, in the interest of judicial expediency, the Organizational Plaintiffs support their Opposition with declarations from the Organizational Plaintiffs’ executive representatives identifying individual members residing in each of the Congressional Districts (“CD”) Plaintiffs challenge: CD 6, CD 13,³ and CD 14 (collectively the “Challenged Districts”). These declarations attest to the names

³ Although Common Cause was able to identify 143 members that reside in CD 13, they were unable to find a member who was comfortable allowing his or her name and personal address to be publicly associated with Common Cause. Nevertheless, Common Cause continues to work with its membership to obtain such consent, and will supplement the record when a member agrees, if such an update is needed.

of individual members in each of the Challenged Districts, their residency in the Challenged Districts, and their membership with the Organizational Plaintiffs. *See* Ex. 20, Dennis Decl. ¶¶ 17, 19; Ex. 23, Bolen Decl. ¶¶ 20-23. To protect their personal safety and in line with the associational privilege, the Organizational Plaintiffs request that this Court permit them to redact and file under seal the identifying information of the Organizational Plaintiffs' individual members included in those declarations. *See* Ex. 20, Dennis Decl. ¶¶ 9-15; Ex. 23, Bolen Decl. ¶¶ 12-18.⁴ Defendant does not oppose this request.

LEGAL ARGUMENT

A showing of good cause can overcome the public's common law right of access. *See Romero v. Drummond Co.*, 480 F.3d 1234, 1246 (11th Cir. 2007). Courts balance the asserted right of access against the moving party's interest in keeping information confidential. *Id.* (citing *Chi. Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1311 (11th Cir. 2001)). A party's privacy or proprietary interest may overcome the interest of the public in accessing the information. *Id.* (citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978)); *see cf. Allgood v. Paperlesspay Corp.*, 2021 WL 3887558, at *2 (M.D. Fla. June 4, 2021) (finding good cause because "Plaintiffs' privacy interest in protecting" the names of non-party family members "outweighs the public's right to access this information").

⁴ Pursuant to N.D. Ga. L.R. App. H, Exh. A(II)(I)(1), the Organizational Plaintiffs are already permitted to redact those members' "[h]ome addresses." Plaintiffs, however, want to ensure that the Defendant and the Court have the benefit of seeing the addresses, but that the addresses remain sealed from the public's view.

To that end, Appendix H of the Local Rules of the Northern District of Georgia considers documents filed in the District Court to be “presumptively public” but allows for counsel to request sealing of any filing, requiring counsel to “exercise appropriate discretion” and establish good cause for sealing. *See* N.D. Ga. L.R. App. H, Exh. A(II)(J).

To support a motion to seal, the local rules require that the movant:

- (i) identify, with specificity, the document(s) or portion(s) thereof for which sealing is requested;
- (ii) explain (for each document or group of documents) the reasons sealing is necessary;
- (iii) explain (for each document or group of documents) why less drastic alternatives than sealing will not provide adequate protection;
- and;
- (iv) address the factors governing sealing of documents reflected in controlling case law.

N.D. Ga. L.R. App. H, Exh. A(II)(J)(2)(d). Each will be addressed in turn.

First, the Organizational Plaintiffs seek to redact from the record only the names and addresses of the individual members they identify in an abundance of caution as additional support for their showing of associational standing. *See* Ex. 20, Dennis Decl. ¶¶ 17, 19; Ex. 23, Bolen Decl. ¶¶ 20-23. These members are third party private citizens and have otherwise been uninvolved in this litigation.

Second, the Organizational Plaintiffs seek to seal and redact this information to protect both the personal safety of their identified members and the First

Amendment rights of their membership at-large. In determining whether to seal information, a court must consider “whether allowing access would . . . harm legitimate privacy interests [and] the degree of and likelihood of injury if made public.” *Romero*, 480 F.3d at 1246; *see* N.D. Ga. L.R. App. H, Exh. A(II)(J)(2)(d) (affirming that the “reason[] sealing is necessary” is a factor in determining good cause).

In turn, courts in this Circuit and beyond recognize that the protection of identities of non-parties, like here, constitutes good cause. *See Allgood v. Paperlesspay Corp.*, 2021 WL 3887558, at *2 (M.D. Fla. June 4, 2021) (sealing “the names and personal identifying information of [nonparty] family members” because “Plaintiffs’ privacy interest in protecting this information outweighs the public’s right to access this information”); *Shamblin v. Obama for Am.*, 2014 WL 6611006, at *3 (M.D. Fla. Nov. 21, 2014) (sealing the names of non-party class members because “[the] personal identifying information of third parties deserves protection”); *Am. Automobile Ass’n of N. Cal., Nev., & Utah*, 2019 WL 1206748, at *2 (N.D. Cal. Mar. 14, 2019) (finding compelling reasons to seal personally identifiable information, “including names, addresses, phone numbers, and email addresses”); *Carter v. Sw. Airlines Co.*, 2022 WL 283025, at *6 (N.D. Tex. Jan. 31, 2022) (permitting the “redact[ion] [of] the names of non-party employees”); *Brown v. Vivint Solar, Inc.*, 614 F. Supp. 3d 1127, 1134 (M.D. Fla. 2020) (requiring that “the parties shall redact non-party customer last names on documents beyond the first letter of their last names”). In fact, this Court already requires the redaction of home addresses of individuals. *See* N.D. Ga. L.R. App. H, Exh. A(II)(I)(1)(e).

Indeed, the First Amendment protects the forced public disclosure of an organization's members. Because the freedom to associate is a fundamental right, "a qualified First Amendment associational privilege exists." *Christ Covenant Church v. Town of Sw. Ranches*, 2008 WL 2686860, at *5 (S.D. Fla. June 29, 2008); *see also NAACP v. Alabama*, 357 U.S. at 462-63. In turn, the associational privilege protects against the forced disclosure of an organization's members when there is a "reasonable probability" that disclosure could subject the organization's members to "threats, harassment, or reprisals from either Government officials or private parties." *Fed. Election Comm'n v. Hall-Tyner Election Campaign Comm.*, 678 F.2d 416, 418 (2d Cir. 1982) (quotation omitted).

The Supreme Court recognizes that the public disclosure of an organization's rank-and-file membership will likely "affect adversely the ability of petitioner and its members to pursue their collective . . . beliefs" when such disclosure may "expose[] these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." *See also NAACP v. Alabama*, 357 U.S. at 462-63. The privilege may apply when disclosure would result in either "(1) harassment, membership withdrawal, or discouragement of new members, or [2] other consequences which objectively suggest an impact on, or 'chilling' of, the members' associational rights." *Edmondson v. Velvet Lifestyles, LLC*, 2016 WL 7048363, at *9 (S.D. Fla. Dec. 5, 2016) (quoting *Perry v. Schwarzenegger*, 591 F.3d 1147, 1160 (9th Cir. 2010)).

Here, both organizations identified, by name, several members in the Dennis Declaration and the Bolen Declaration. *See* Ex. 20, Dennis Decl. ¶¶ 17, 19; Ex. 23,

Bolen Decl. ¶¶ 20-23. But the public disclosure of members' identities would jeopardize their personal safety and result in a chilling effect on the organization itself and the members' associational rights. *See* Ex. 20, Dennis Decl. ¶¶ 9-14; Ex. 23, Bolen Decl. ¶¶ 12-18. Both organizations protect their members' data and information, including their members' identities. For instance, the League of Women Voters represents to its members that it “will protect [their] personal privacy. . . . [It] DO[ES] NOT share information with outside organizations.” *See* link: <https://lwvc.org/privacy> (emphasis in original); *see also* Ex. 23, Bolen Decl. ¶¶ 12-18. Common Cause, likewise, protects the identities of its members as disclosure could place the organization and the members in jeopardy. *See* Ex. 20, Dennis Decl. ¶¶ 9-14.

This is not an abstract concern. To the contrary, both organizations have been aware of and impacted by local controversy of private individuals based on their affiliation with political processes and organizations. *See* Ex. 20, Dennis Decl. ¶¶ 10-14; Ex. 23, Bolen Decl. ¶¶ 13-18. In response, both organizations as a matter of policy and practice safeguard and protect their members' identities to ensure that the organization can continue advocating for their collective beliefs. *See* Ex. 20, Dennis Decl. ¶¶ 9-15; Bolen Decl. ¶¶ 12-18. Accordingly, the public disclosure of the members' identities both could place their personal safety into jeopardy and could impede the collective goals of the organizations.

Third, no other “less drastic alternative will provide adequate protection.” *Romero*, 480 F.3d at 1246 (recognizing as a factor the “availability of a less onerous alternative to sealing the documents”). Here, the Organizational Plaintiffs are not

seeking to withhold from the public any information beyond that necessary to protect their members' safety and privacy. The Organizational Plaintiffs are not seeking to redact anything beyond the names of their members (and their home addresses as required by Section (I)).

Fourth, the other factors a court may balance do not warrant public disclosure of individual members' identities. In determining whether to grant a motion to seal, a court must also consider, among other factors, "whether allowing access would impair court functions[,] . . . the reliability of the information, whether there will be an opportunity to respond to the information, [and] whether the information concerns public officials or public concerns." *Romero*, 480 F.3d at 1246. Here, there is no basis to contend that the redaction of the members' names would impair court functions. Similarly, there is no basis to contend that the information is unreliable, especially given that Defendant acknowledges that at most the Organizational Plaintiffs only need one member to reside in each Challenged District, while the Organizational Plaintiffs have testified that they collectively have dozens, if not hundreds, of members residing in each Challenged District. Finally, although this lawsuit is no doubt greatly important to the public, the information sought to be redacted—individual names of several of the thousands of members of these organizations, all of whom are non-parties to the instant lawsuit—does not implicate public concerns.

CONCLUSION

For the reasons stated above, the Organizational Plaintiffs respectfully request that this Court grant their Motion to Seal and redact from the public record the names and addresses of their individual members who are not parties to this action, which are located in Paragraphs 17 and 19 of the Dennis Decl., *see* Ex. 20, and Paragraphs 20-23 in the Bolen Decl., *see* Ex. 23.

Dated this 26th day of April 2023.

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Northern District of Georgia Local Rule 7.1 Certification

Pursuant to N.D. Ga. L.R. 7.1(D), I, Jack Genberg, certify that this brief was prepared using Times New Roman 14 pt. font, which is one of the font and point selections approved by the Court in L.R. 5.1(B).

Dated this 26th day of April, 2023

Respectfully submitted,

/s/ Jack Genberg

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

GEORGIA STATE CONFERENCE OF)
THE NAACP, et al.)

Plaintiffs,)

v.)
STATE OF GEORGIA, et al.)

Defendants.)

Case No. 1:21-CV-5338- ELB-SCJ-SDG

COMMON CAUSE, et al.,)

Plaintiffs,)

v.)
BRAD RAFFENSPERGER)

Defendant.)

Case No. 1:22-CV-00090- ELB-SCJ-SDG

**DECLARATION OF CASSANDRA NICOLE LOVE-OLIVO IN SUPPORT
OF ORGANIZATIONAL PLAINTIFFS’ MOTION TO SEAL**

I, Cassandra Nicole Love-Olivo, declare:

1. I am an attorney at law at Dechert LLP. I am counsel for Plaintiffs, including Plaintiffs League of Women Voters of (“League”) and Common Cause (collectively, “Organizational Plaintiffs”), and have been admitted *pro hac vice* in this case.

2. I respectfully submit this Declaration in Support of the Organizational Plaintiffs' Unopposed Motion to Seal Select Portions of Certain Exhibits Submitted in Opposition to Defendant's Motion for Summary Judgment, filed concurrently herewith. Unless otherwise stated, I have personal knowledge of the matters stated herein and would competently testify thereto if called upon as a witness.

3. Counsel for Defendant informed me in the evening on April 26, 2023, that Defendant does not oppose this Motion.

4. The materials sought to be placed under seal in this action are certain portions of specific exhibits to the Declaration of Cassandra N. Love-Olivo in Opposition to Defendant's Motion for Summary Judgment, as follows:

- a. Exhibit 20 (Declaration of Plaintiff Common Cause's Corporate Representative, Treaunna Dennis); and
- b. Exhibit 23 (Declaration of Plaintiff League of Women Voters' Corporate Representative, Julie Bolen).

I declare under penalty of perjury under the laws of the United States and the State of Georgia that the foregoing is true and correct.

Executed in Los Angeles, California, on this 26th day of April, 2023.

By: /s/ Cassandra Nicole Love-Olivo
Cassandra Nicole Love-Olivo

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

GEORGIA STATE CONFERENCE OF)
THE NAACP, et al.)

Plaintiffs,)

v.)

STATE OF GEORGIA, et al.)

Defendants.)

COMMON CAUSE, et al.,)

Plaintiffs,)

v.)

BRAD RAFFENSPERGER)

Defendant.)

) Case No. 1:21-CV-5338- ELB-SCJ-SDG

) Case No. 1:22-CV-00090- ELB-SCJ-SDG

**[PROPOSED] ORDER GRANTING ORGANIZATIONAL PLAINTIFFS’
UNOPPOSED MOTION TO SEAL SELECT PORTIONS OF CERTAIN
EXHIBITS SUBMITTED IN OPPOSITION TO DEFENDANT’S MOTION
FOR SUMMARY JUDGMENT**

Upon consideration of the Organizational Plaintiffs’ Unopposed Motion to Seal Select Portions of Certain Exhibits Submitted in Opposition to Defendant’s Motion for Summary Judgment, the following is hereby ordered:

1. The Organizational Plaintiffs’ Motion is **GRANTED**.

2. The Clerk is directed to file under seal the following exhibits to the Declaration of Cassandra N. Love-Olivo Opposition to the Defendant's Motion for Summary Judgment:

- a. Exhibit 20 (Declaration of Plaintiff Common Cause's Corporate Representative, Treanna Dennis, dated April 26, 2023); and
 - b. Exhibit 23 (Declaration of Plaintiff League of Women Voters's Corporate Representative, Julie Bolen, dated April 26, 2023).
3. The Clerk is directed to maintain these records under seal.

IT IS SO ORDERED on this ___ day of _____, 2023.

Hon. Steven D. Grimberg
United States District Court Judge

Hon. Steven C. Jones
United States District Court Judge

Hon. Eleanor L. Ross
United States District Court Judge