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

JASON FRAZIER and EARL FERGUSON, *Plaintiffs*, v. FULTON COUNTY DEPARTMENT OF REGISTRATION AND ELECTIONS, SHERRI ALLEN, AARON JOHNSON, MICHAEL HEEKIN, AND TERESA K. CRAWFORD, individually, and in their official capacities as members of the Fulton County Department of Registration and Elections, KATHRYN GLENN, individually, and in her official capacity as Registration Manager of the Fulton County Department of Registration and Elections, BRAD RAFFENSPERGER, in his official and individual capacities. *Defendants.*	)	Case No. 1:24-cv-03819

PROPOSED INTERVENOR-DEFENDANTS GEORGIA STATE CONFERENCE OF THE NAACP; GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC.; LEAGUE OF WOMEN VOTERS OF GEORGIA; AND COMMON CAUSE GEORGIA MOTION TO INTERVENE

COMES NOW GEORGIA STATE CONFERENCE OF THE NAACP; GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC.; LEAGUE OF

WOMEN VOTERS OF GEORGIA; and COMMON CAUSE GEORGIA ("Proposed Intervenor-Defendants"), by and through its undersigned counsel of records, and files this Motion to Intervene in the above-referenced matter pursuant to Federal Rule of Civil Procedures 24(a) and (b).

The basis for this motion is fully set forth in Proposed Intervenor-Defendants' Brief in Support of Proposed Motion to Intervene. As required by Federal Rule of Civil Procedure 24(c), Proposed Intervenor-Defendants accompany their Motion to Intervene with a Motion to Dismiss and brief in support as Exhibit 1.

Respectfully submitted this 12th day of September, 2024.

Dated: September 12, 2024

Respectfully submitted,

By: /S/ Gerald Weber

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**Motion for admission pro hac vice forthcoming*

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Dated this 12th day of September 2024.

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BRIEF IN SUPPORT OF MOTION TO INTERVENE BY GEORGIA STATE CONFERENCE OF THE NAACP, GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC., THE LEAGUE OF WOMEN VOTERS OF GEORGIA, AND COMMON CAUSE GEORGIA

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INTRODUCTION AND BACKGROUND

Proposed Intervenors Georgia State Conference of the NAACP ("Georgia NAACP"), Georgia Coalition for the People's Agenda, Inc. ("GCPA" or "People's Agenda"), League of Women Voters of Georgia ("LWVGA"), and Common Cause Georgia (together the "Proposed Intervenors") move, under Federal Rule of Civil Procedure ("Rule") 24(a)(2), to intervene as of right as Defendants in this matter, or in the alternative, move for permissive intervention pursuant to Rule 24(b). Pursuant to Rule 24(c), Proposed Intervenors' Motion to Dismiss and Brief in Support is attached hereto as Exhibit 1.

Plaintiffs ask this Court to order Defendants, the Fulton County Department of Registrations and Election (the "Board") and its members, to purge nearly 2,000 Fulton County voters from the rolls on the eve of a presidential general election. They also vaguely ask the Board to identify and remove all "ineligible voters" from the voter rolls. As explained in our proposed Motion to Dismiss, the Complaint seeks a remedy that is unprecedented and in clear violation of federal law. At core, the requested relief is an improper attempt to end-run the National Voter Registration Act's ("NVRA") prohibition on systematic voter removal programs within 90 days of a federal election and its required, and exclusive, notice process for removing those voters challenged based on residency.

Proposed Intervenors are civil rights organizations dedicated to protecting the voting rights of their members and all Georgians—particularly those of Black voters and other voters of color. They seek to intervene on behalf of their members and on behalf of themselves. Plaintiffs' requested relief would not only threaten these members' fundamental right to vote but would also cause Proposed Intervenors to divert organizational resources from their voter mobilization, education, and election protection efforts to identify, contact, and assist voters affected by the Complaint in time to participate in the upcoming 2024 General Election.

Proposed Intervenors satisfy each requirement for intervention as a matter of right under Rule 24(a)(2), and the Court should grant their motion to intervene. Alternatively, the motion should be granted on a permissive basis under Rule 24(b)(1).

ARGUMENT

I. PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE AS OF RIGHT UNDER RULE 24(A)(2).

Proposed Intervenors are entitled to intervene as of right. Under Rule 24(a)(2):

> Parties seeking to intervene [as of right] must show that: (1) [their] application to intervene is timely; (2) [they have] an interest relating to

> the property or transaction which is the subject of the action; (3) [they are] so situated that disposition of the action, as a practical matter, may impede or impair [their] ability to protect that interest; and (4) [their] interest is represented inadequately by the existing parties to the suit.

Tech. Training Assocs., Inc. v. Buccaneers Ltd. P'ship, 874 F.3d 692, 695-96 (11th Cir. 2017) (alterations in original) (internal quotations omitted). "[C]ourts should resolve 'doubt[s] concerning the propriety of allowing intervention . . . in favor of the proposed intervenors because it allows the court to resolve all related disputes in a single action.'" *Zone 4, Inc. v. Brown*, No. 19-00676, 2019 WL 7833901, at *5 (N.D. Ga. Aug. 6, 2019) (quoting *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 216 (11th Cir. 1993)). Proposed Intervenors meet the requirements of interventions as of right.

A. The Motion Is Timely.

When courts examine timeliness, they consider four factors: 1) "the length of time during which the would-be intervenor knew or reasonably should have known of his interest in the case before petitioning for leave to intervene;" (2) "the extent of the prejudice that existing parties may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest;" (3) "the extent of the prejudice that

the would-be intervenor may suffer if denied the opportunity to intervene"; and (4) "the existence of unusual circumstances weighing for or against a determination of timeliness." *Comm'r, Ala. Dep't of Corr. v. Advance Local Media, LL*C, 918 F.3d 1161, 1171 (11th Cir. 2019) (internal quotations omitted).

Each of the timeliness factors weigh in favor of Proposed Intervenors. Proposed Intervenors have not delayed in filing—they learned of this litigation shortly after its filing and are submitting this motion shortly after the filing of the Complaint on August 28, 2024, *see* Compl., ECF No. 1, and before any Answer would be due. As such, no existing party to the litigation is harmed or prejudiced here, and there are no unusual circumstances in this matter that bear on timeliness of intervention. Proposed Intervenors' motion is timely.

B. Proposed Intervenors Have Significant and Strong Interests in Intervention.

"Under Rule 24(a)(2), a party is entitled to intervention as a matter of right if the party's interest in the subject matter of the litigation is direct, substantial and legally protectable." *Mt. Hawley Ins. Co. v. Sandy Lake Props., Inc*., 425 F.3d 1308, 1311 (11th Cir. 2005) (internal quotations omitted). "In deciding whether a party has a protectable interest . . . courts must be 'flexible' and must 'focus[ ] on the particular

facts and circumstances' of the case." *Huff v. Comm'r of IRS*, 743 F.3d 790, 796 (11th Cir. 2014) (second alteration in original).

Proposed Intervenors have at least two significant interests at stake in this litigation: (1) ensuring that the members and constituents they serve remain registered to vote and are able to successfully participate in the upcoming November 5, 2024 election, and (2) continuing to engage in critical election-year activities and other organizational priorities without being forced to divert resources to address harms to their members and constituents that would flow from Plaintiffs' requested relief.

As to their members, many are eligible voters who are registered to vote in Fulton County and intend to vote on November 5, 2024. *See* Decl. of Gerald Griggs ("Griggs Decl."), attached hereto as Exhibit 2, at ¶ 11; Decl. of Helen Butler ("Butler Decl."), attached hereto as Exhibit 3, at ¶ 10; Decl. of Nichola ("Hines Decl."), attached hereto as Exhibit 4, at ¶¶ 1, 4, Decl. of Jay Young ("Young Decl."), attached hereto as Exhibit 5, at ¶ 14. The disposition of this suit will directly impact the members and constituents of Proposed Intervenors—eligible voters who stand to be disenfranchised if the Board is ordered to conduct immediate list maintenance during the NVRA quiet period or purge the nearly 2,000 voters identified in Plaintiffs'

challenges. *See Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1307 (N.D. Ga. 2018) (finding intervention as of right to be appropriate where voter intervenors would be potentially disenfranchised by the requested relief); *Bellitto v. Snipes*, No. 16-61474, 2016 WL 5118568, at *2 (S.D. Fla. Sept. 20, 2016) (granting intervention where organization "asserts that its interest and the interests of its members would be threatened by the court-ordered 'voter list maintenance' sought by Plaintiffs"); *Pub. Int. Legal Found., Inc.* v. *Winfrey* ("*PILF*"), 463 F. Supp. 3d 795, 798-802 (E.D. Mich. 2020) (permitting League intervention in NVRA suit to purge voters in order to protect interests of its members and "assure that no overzealous measures going beyond the reasonable list maintenance program required by the statute are employed, which could increase the risk of properly registered voters being removed by mistake").

Proposed Intervenors also have an interest in protecting a critical component of their election-year programs and other organizational priorities—ensuring that their members, and all Georgians, are given a full and equal opportunity to exercise their fundamental right to vote. Griggs Decl., at ¶¶ 3-5; 17; Butler Decl., at ¶¶ 4, 6, 17; Hines Decl., at ¶¶ 4, 5-8; Young Decl., at ¶¶ 4-5, 9, 16-22. To that end, Proposed Intervenors have been assisting their members and other prospective voters in

registering to vote; educating them about voting in the November 5 general election; and planning activities to mobilize these voters to the polls. Griggs Decl., at ¶ 17; Butler Decl., at ¶¶ 4, 12-13; Hines Decl., at ¶¶ 7-8; Young Decl., at ¶¶ 5, 17. But their work is at risk of being undermined if this Court orders the Board to remove registered voters from the Fulton County voter roll ahead of the General Election. This risk is particularly heightened here, where Proposed Intervenors would have to divert from their ordinary work during the 90-day NVRA quiet period and contact and re-register voters before the fast-approaching close of voter registration. Courts routinely find that public interest organizations, like Proposed Intervenors, should be granted intervention in voting cases when they demonstrate harm to their core missions and activities. *See, e.g.*, *Kobach v U.S. Election Assistance Comm'n*, No. 13-4095, 2013 WL 6511874, at *4 (D. Kan. Dec. 12, 2013) (allowing advocacy groups to intervene where interests broadly articulated as "either increasing participation in the democratic process, or protecting voting rights, or both, particularly amongst minority and underprivileged communities").

Proposed Intervenors also have an interest in avoiding the need to divert resources to respond to a mass removal of voters, particularly during the pre-election time that is extraordinarily busy for pro-voter organizations. As discussed above,

Proposed Intervenors have a full slate of planned activities ahead of the General Election, including voter registration, voter education, and voter mobilization. Griggs Decl., at ¶¶ 5, 10, 17; Butler Decl., at ¶¶ 4, 12-13; Hines Decl., at ¶¶ 7-8. Young Decl., at ¶¶ 5, 17. The Proposed Intervenors also have commitments to furthering their work in other areas such as criminal and economic justice reform. Griggs Decl., at ¶ 20; Butler Decl., at ¶¶ 14-15; *see also* Hines Decl., at ¶¶ 5, 13; Young Decl at ¶¶ 18-19. Their staff are already stretched thin, and an outcome in this case that requires Defendants to initiate an improper purge would further drain the Proposed Intervenors' limited resources. Griggs Decl, at ¶¶ 17-20; Butler Decl., at ¶¶ 6, 14-15; Hines Decl., at ¶ 13; Young Decl., at ¶ 7, 9, 13, 18-19. In such a scenario, the Proposed Intervenors would need to assist voters who might be purged, to look up whether their members and constituents are subject to a purge, and to follow-up on their members' behalf prior to Election Day, all of which would require inordinate staff and volunteer time and resources these Organizations cannot afford to lose. *Id. See also PILF*, 463 F. Supp. 3d 795, 798-802; *Issa v. Newsom*, No. 20-01055, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (permitting intervention by civil rights organizations on grounds that if plaintiffs won, then proposed intervenors would "have to devote their limited resources to educating their

members on California's current voting-by-mail system and assisting those members with the preparation of applications to vote by mail"). Proposed Intervenors thus have a significant protectible interest in intervention.

C. Proposed Intervenors and Their Members Will Be Prejudiced if They Are Not Permitted to Intervene.

When weighing Rule 24(a)(2)'s prejudice prong, courts examine whether "[t]he disposition of the action, as a practical matter, may impede or impair [a proposed intervenors'] ability to protect" their interests. *Tech. Training Assocs., Inc.*, 874 F.3d at 695-96 (internal quotations omitted). Importantly, Proposed Intervenors need not "establish that their interests *will* be impaired." *Brumfield v. Dodd*, 749 F.3d 339, 344 (5th Cir. 2014). "It would indeed be a questionable rule that would require prospective intervenors to wait on the sidelines until after a court has already decided enough issues contrary to their interests. The very purpose of intervention is to allow interested parties to air their views so that a court may consider them before making potentially adverse decisions." *Id.* at 344-45.

As discussed in detail above, Proposed Intervenors are at risk of losing their ability to protect their interests and those of their members, and thus will be prejudiced if intervention is denied. *Supra* pp. 5-8. "Historically. . . throughout the

country, voter registration and election practices have interfered with the ability of minority, low-income, and other traditionally disenfranchised communities to participate in democracy." *Ind. State Conf. of NAACP v. Lawson*, 326 F. Supp. 3d 646, 650 (S.D. Ind. 2018), *aff'd sub nom*, *Common Cause Indiana v. Lawson*, 937 F.3d 944 (7th Cir. 2019). If Proposed Intervenors are denied the ability to intervene in this case, they risk disenfranchisement of their members and injury to their core organizational interests and programs, *see supra* pp. 5-8, particularly because Defendants are not situated to adequately protect those interests. *Infra* Section I(D).

D. Proposed Intervenors' Interests Are Not Adequately Protected by Defendants.

The existing parties in this litigation may not protect their interests. The Eleventh Circuit has recognized that defendants who are elected officials and/or administer elections have divergent interests from intervening voters and voting rights organizations because they represent the interests of all voting citizens and have an interest in "remain[ing] popular and effective leaders." *Clark v. Putnam Cnty.*, 168 F.3d 458, 461-62 (11th Cir. 1999) (alteration in original) (internal quotations omitted). This principle squarely applies here: Defendants the Board and

Secretary Raffensperger have responsibilities related to the administration of elections that do not necessarily further the interests of Proposed Intervenors.

For example, as elected officials, Defendants' "interests and interpretation of the NVRA may not be aligned and its reasons for seeking dismissal" may very well be different from those of Proposed Intervenors. *Bellitto*, 2016 WL 5118568, at *2. Proposed Intervenors have repeatedly sued some of these same Defendants or their predecessors in office on various violations of voting laws. *See, e.g.*, *Ga. State Conf. of the NAACP v. Georgia*, No. 17-1397, 2017 WL 9435558 (N.D. Ga. May 4, 2017) (successful National Voter Registration Act lawsuit brought against the Georgia Secretary of State); *see generally Ga. Coal. for the People's Agenda v. Deal*, No. 4:16-cv-00269-WTM (S.D. Ga.) (Moore, J.); *Ga. State Conf. of the NAACP v. Kemp*, No. 2:16-cv-219-WCO (N.D. Ga.) (O'Kelley, J.); *Ga. Coal. for the People's Agenda v. Raffensperger*, No. 1:18-cv-4727-ELR (N.D. Ga.) (Ross, J.); *Martin v. Raffensperger*, No. 1:18-cv-4776-LMM (N.D. Ga.) (May, J.); and *Common Cause v. Raffensperger*, No. 1:22-cv-00090-ELB-SCJ-SDG (N.D. Ga.) (Branch, J.; Jones, J.; Grimberg, J.). As such, a divergence of interests is to be entirely expected.

Additionally, Defendants do not have a direct interest in protecting their own votes as the Proposed Intervenors' members do. Nor do they have an interest in

ensuring the broad voter access that is fundamental to the mission of the Proposed Intervenors. *See, e.g.*, *Meek v. Metro. Dade Cnty., Fla.*, 985 F.2d 1471, 1478 (11th Cir. 1993) ("The intervenors sought to advance their own interests in achieving the greatest possible participation in the political process. Dade County, on the other hand, was required to balance a range of interests likely to diverge from those of the intervenors."), *abrogated on other grounds*, *Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324 (11th Cir. 2007). Proposed Intervenors' interests therefore sufficiently diverge from the existing parties to satisfy Rule 24(a)(2).

Proposed Intervenors recognize that this Court granted New Georgia Project Action Fund's ("NGPAF's") Motion to Intervene as a Defendant. ECF 28. Proposed Intervenors respectfully submit that NGPAF's presence in the lawsuit does not ensure the adequate representation of Proposed Intervenors' interests. Proposed Intervenors have their own members across Georgia, including in Fulton County, who Proposed Intervenors are organizationally committed to assisting in exercising their right to vote, including in defending from frivolous mass voter challenges. Further, the work of NGPAF and Proposed Intervenors is complementary, but it is not identical. Proposed Intervenors independently have much at stake in this litigation. As such, the interests of Proposed Intervenors remain inadequately

represented. In the event that the Court finds otherwise, Proposed Intervenors respectfully request that they be granted permissive intervention and given the same opportunity to defend their interests and the interests of their members as NGPAF.

II. IN THE ALTERNATIVE, THE COURT SHOULD GRANT PERMISSIVE INTERVENTION.

"Permissive intervention under Fed. R. Civ. Proc. 24(b) is appropriate where a party's claim or defense and the main action have a question of law or fact in common and the intervention will not unduly prejudice or delay the adjudication of the rights of the original parties." *Georgia v. U.S. Army Corps of Eng'rs*, 302 F.3d 1242, 1250 (11th Cir. 2002). Even if the Court determines that Proposed Intervenors are not entitled to intervene as a matter of right, the Court should exercise its broad discretion to grant permissive intervention.

Indeed, "it is wholly discretionary with the court whether to allow intervention under Rule 24(b). . . ." *Worlds v. Dep't of Health & Rehab. Servs*., 929 F.2d 591, 595 (11th Cir. 1991). Proposed Intervenors represent a large number of Georgians whose votes are at risk if the relief sought is granted. Ensuring that the interests of these voters are advanced is a critical perspective that would serve the interests of the Court. Indeed, "a district court 'can consider almost any factor rationally

relevant but enjoys very broad discretion in granting or denying the motion [to intervene].'" *In re Martinez*, 2024 WL 2873137, at *6. As such, this is an ideal instance for the Court to exercise its discretion and grant permissive intervention for several reasons.

First, Proposed Intervenors will assert defenses that squarely address the factual and legal premises of Plaintiffs' claims, including but not limited to: (1) whether the Defendants' actions are legal under the NVRA; (2) whether Plaintiffs' proposed relief poses an unconstitutional burden on Georgia voters' fundamental right to vote; (3) the impact Plaintiffs' proposed relief would have on the Proposed Intervenors and their members, and (4) whether any of Plaintiffs' allegations, even if proven, would require the drastic remedy they seek.

Second, granting Proposed Intervenors' Motion at this early stage of the case will not delay or prejudice the adjudication of the original parties' rights, as explained above. *Supra* Section I(A). By contrast, refusing to permit intervention will deprive Proposed Intervenors of the chance to defend their significant and protectable interests in the litigation. *Supra* Sections I(B) and I(C).

CONCLUSION

For the reasons stated above, the Court should grant Proposed Intervenors' Motion to Intervene and its exhibits, and upon the granting of this Motion, deem as filed the Motion to Dismiss attached to this Motion as Exhibit 1.

Dated: September 12, 2024

Respectfully submitted,

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Dated this 12th day of September 2024.

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EXHIBIT 1

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COMES NOW GEORGIA STATE CONFERENCE OF THE NAACP; GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC.; LEAGUE OF

WOMEN VOTERS OF GEORGIA; and COMMON CAUSE GEORGIA ("Proposed Intervenor-Defendants"), by and through its undersigned counsel of records, and files this Proposed Motion to Dismiss pursuant to the Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

The basis for this motion is fully set forth in Proposed Intervenor-Defendants' Brief in Support of Proposed Motion to Dismiss.

Dated: September 12, 2024

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**Motion for admission pro hac vice forthcoming*

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1, the undersigned counsel hereby certifies that this document has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1.

Dated this 12th day of September 2024.

/s/ Gerry Weber
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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

JASON FRAZIER and EARL FERGUSON, *Plaintiffs*, v. FULTON COUNTY DEPARTMENT OF REGISTRATION AND ELECTIONS, SHERRI ALLEN, AARON JOHNSON, MICHAEL HEEKIN, AND TERESA K. CRAWFORD, individually, and in their official capacities as members of the Fulton County Department of Registration and Elections, KATHRYN GLENN, individually, and in her official capacity as Registration Manager of the Fulton County Department of Registration and Elections, BRAD RAFFENSPERGER, in his official and individual capacities. *Defendants,*	)	Case No. 1:24-cv-03819

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS BY PROPOSED INTERVENORS GEORGIA STATE CONFERENCE OF THE NAACP, GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC., LEAGUE OF WOMEN VOTERS OF GEORGIA, AND COMMON CAUSE GEORGIA

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INTRODUCTION

On the eve of the presidential election, Plaintiffs request an unprecedented and extraordinary remedy: that the Fulton County Department of Registrations and Elections (the "Board") not only remove nearly two thousand presumably lawfully registered voters from the County's voter roll, but also conduct systematic list maintenance of its entire voter roll. Plaintiffs allege that without these actions, the outcome of the election will be inaccurate, result in the dilution of "lawful" votes, and may warrant a court order decertifying the results of the election. Compl. ¶¶ 65, 66, 114. But Plaintiffs have not presented any plausible allegations to support their speculation about unlawful voting. Whatever Plaintiffs' end game is, federal law prohibits the relief they seek. And this Court should dismiss the Complaint in its entirety.

First, Plaintiffs do not have Article III standing to bring any of their claims. Nor do they have statutory standing to sustain their claims under the NVRA. Additionally, because this Court does not have original jurisdiction over the action, it may not exercise supplemental jurisdiction over Plaintiffs' state law claims. The Court therefore does not have, subject matter jurisdiction to hear Counts I-V.

Second, Plaintiffs have not stated a claim upon which relief may be granted. The legal underpinnings of Counts I-IV are non-existent. Specifically, the NVRA's prohibitions and requirements preempt state law, and to the extent that Counts II

through IV seek essentially the same relief under state law as Count I seeks under federal law—removal of registered voters on residency grounds—these state law claims are preempted by 8(c) and 8(d) of the NVRA. Furthermore, claims that the Board is derelict in its duty to conduct list maintenance are based wholly on a single vague and isolated statement, whose context is not explained, by a former Chairperson of the Board, which is insufficient to provide a plausible basis for so drastic relief as that sought by Plaintiffs here.

I. APPLICABLE LEGAL STANDARDS

A. RULE 12(b)(1)

Federal Rule of Civil Procedure 12(b)(1) permits a party to challenge the Court's subject-matter jurisdiction, meaning that parties may challenge plaintiffs' standing to assert their claims. Fed. R. Civ. P. 12(b)(1); *see Cone Corp. v. Fla. Dep't of Transp.*, 921 F.2d 1190, 1203 n.42 (11th Cir. 1991). Unlike Rule 12(b)(6), Rule 12(b)(1) does not require a court to view plaintiffs' allegations in a favorable light and permits a court to consider evidence refuting those allegations. *Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727, 732 n.9 (11th Cir. 1982). Because Rule 12(b)(1) questions the court's jurisdiction, "no presumptive truthfulness attaches to plaintiff's allegations" and "the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Flat Creek Transp., LLC v. Fed. Motor Carrier Safety Admin.*, 923 F.3d 1295, 1299 n.1 (11th Cir. 2019).

B. RULE 12(b)(6)

Under Federal Rule of Civil Procedure Rule 12(b)(6), a claim will be dismissed for failure to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Lowery v. Deal*, 850 F. Supp. 2d 1326, 1330 (N.D. Ga. 2012) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). A claim will survive a motion to dismiss only if the factual allegations in the complaint are "enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. Although the allegations of a complaint must be accepted as true and construed in the light most favorable to the plaintiff, *Powell v. Thomas*, 643 F.3d 1300, 1302 (11th Cir. 2011), the court need not accept the plaintiff's legal conclusions or for that matter, legal conclusions couched as factual allegations, *Iqbal*, 556 U.S. at 678–79. The evaluation of a motion to dismiss requires two steps: (1) eliminate any allegations in the complaint that are merely legal conclusions, and (2) where there are well-pleaded factual allegations, "assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* at 679.

II. ARGUMENT

A. THE COURT LACKS SUBJECT MATTER JURISDICTION OVER EACH OF PLAINTIFFS' CLAIMS.

Plaintiffs fail to allege bases for both constitutional and statutory standing. Because Plaintiffs ultimately cannot maintain a case or controversy under the federal statutes, this Court does not have original jurisdiction and cannot exercise supplemental jurisdiction over Plaintiffs' state law claims in Counts II-V. For these reasons, Counts I-V must be dismissed under Rule 12(b)(1) in its entirety.

1. Plaintiffs Have Not Established Constitutional Standing as Required Under Article III for Counts I, II, IIB, III, IV, and V.

Federal courts are courts of limited jurisdiction, meaning they may hear only "cases" and "controversies" under Article III of the Constitution. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Standing to sue is one component of Article III's case or controversy requirement. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). This requirement extends not only to federal claims, but also to supplemental state law claims pleaded in federal court. *Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1130 (11th Cir. 2019). Furthermore, Plaintiffs must demonstrate standing for each form of relief sought. *Id.* at 1124–25.[1]

[1] That Plaintiffs seek the extraordinary remedy of a writ of mandamus under, among other sources, the All Writs Act, does not alter constitutional standing requirements. *U.S. v. Denedo*, 556 U.S. 904, 911 (2009) ("As the text of the All Writs Act recognizes, a court's power to issue any form of relief—extraordinary or

To establish standing, Plaintiffs must demonstrate (1) an injury-in-fact, (2) that is fairly traceable to the challenged action of the defendant, and (3) is likely to be redressed by a favorable court decision. *Wood v. Raffensperger*, 981 F.3d 1307, 1313 (11th Cir. 2020); *Lujan*, 504 U.S. at 560–61. An injury in fact is "an invasion of a legally protected interest that is both concrete and particularized and actual or imminent, not conjectural or hypothetical." *Wood*, 981 F.3d at 1314. In other words, the injury must "affect the plaintiff in a personal and individual way." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). A "generalized grievance" that is "undifferentiated and common to all members of the public" does not confer standing. *Wood*, 981 F.3d at 1314 (quoting *Lujan*, 504 U.S. at 575).

Plaintiffs fail the first prong of the test. Not one of their claims contains allegations supporting a concrete and particularized injury. Indeed, Plaintiffs' thirty-six-page Complaint does no more than repeat generalized grievances against the Board for a supposed failure to comply with state and federal law. Such a generalized interest in government action is not sufficient to support standing, and Plaintiffs' claims must be dismissed. Furthermore, because Plaintiffs cannot establish an injury-in-fact under the first prong, the Court need not consider causation and redressability. *See id.*

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otherwise—is contingent on that court's subject-matter jurisdiction over the case or controversy."); *see also Burr & Forman v. Blair*, 470 F.3d. 1019 (11th Cir. 2006); *Auburn Med. Ctr., Inc. v. Peters*, 953 F. Supp. 1518 (M.D. Ala. 1996).

The Counts in Plaintiffs' Complaint all allege generalized grievances. To begin, Count II (¶¶ 73–82), Count IIB (¶¶ 83–114),[2] and Count III (¶¶ 115–20) request different forms of relief for the same underlying violation—the Board allegedly never conducts any list maintenance under O.C.G.A. § 21-2-228(a). *See, e.g.*, Compl. ¶¶ 18, 20, 26.[3] But in sustaining these requests for relief, Plaintiffs do not articulate any concrete or particularized injury other than a "clear legal right to have public election officials act in a manner consistent with state law that imposes a non-discretionary duty" to support any of these claims." Compl. ¶ 96. Such a "clear legal right" in fact does not exist, and instead amounts to nothing more than a generalized grievance that does not furnish Article III standing. *See, e.g.*, *Wood*, 981 F.3d at 1314 (finding individual voter in post-election lawsuit to delay certification did not have standing based on generalized grievance, "ensur[ing that] . . . only lawful ballots are counted"). Using slight variations in language, Counts II, IIB, and III appear to repeat the same injury as the Plaintiff alleged in *Wood*—that the Board must follow the law. But that is not enough. *Id.*; *see also Chiles v. Thornburgh*, 865

[2] Plaintiffs' Complaint has two Counts both labeled Count II. In order to distinguish the two Counts, Intervenors refer to the first Count II (Violation of O.C.G.A. § 21-2-228(a)) as Count II and the second Count II (All Writs Act Relief) as Count IIB.

[3] Count II seeks declaratory relief regarding the Board's failure to conduct list maintenance, Compl. ¶ 82, Count IIB seeks mandamus relief under the All Writs Act compelling the Board to conduct list maintenance, Compl. ¶ 114, and Count III seeks mandamus relief under state law to that same effect, Compl. ¶ 119.

F.2d 1197, 1205–06 (11th Cir. 1989); *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (no standing for party that alleged "an undifferentiated, generalized grievance about the conduct of government"); *Judicial Watch v. FEC*, 180 F.3d 277, 278 (D.C. Cir. 1999) (same). Constant repetition of the litany that they have an interest in the law being followed does not alter the reality their grievance is general. *See, e.g.*, Compl. ¶¶ 112–13, 117–18.

Additionally, Counts I and IIB make oblique references to "vote dilution" based on the failure of the Board to follow federal and state law. Compl. ¶¶ 66, 114. Plaintiffs' other Counts incorporate this paragraph by reference. Compl. ¶¶ 50, 73, 115, 121, 136. To the extent that Plaintiffs' references to vote dilution can be read as an allegation that they are injured because their votes are diluted by the votes that supposedly could be cast by ineligible voters, they fail to articulate a cognizable injury-in-fact. Mere speculation of vote dilution where "no single voter is specifically disadvantaged" is a "paradigmatic generalized grievance." *Wood*, 981 F.3d at 1314–15 (distinguishing from redistricting claims where voters in challenged district directly harmed compared to voters in other districts); *see also Bost v. Ill. State Bd. of Elections*, 684 F. Supp. 3d 720, 731 (N.D. Ill. 2023), *aff'd*, No. 23-2644, 2024 WL 3882901 (7th Cir. Aug. 21, 2024) (collecting cases where courts have "agreed that claims of vote dilution based on the existence of unlawful ballots fail to establish standing"); *Moore v. Circosta*, 494 F. Supp. 3d 289, 312 (M.D.N.C. 2020)

(collecting cases). Plaintiffs' conclusory reference to vote dilution here, unlike the concrete allegations of specific vote dilution harms in many redistricting cases, is also a generalized grievance.

Allegations of "vote dilution" are also not sufficient to confer standing under the NVRA. This means that even if Plaintiffs could meet the NVRA's statutory prerequisites to suit, which they cannot as described below, Plaintiffs still cannot satisfy Article III by alleging a "bare procedural violation" and still must demonstrate a constitutional injury-in-fact. *I See Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005) (state's rejection of plaintiff's federal registration form conferred standing under NVRA); *Nat'l Coal. for Students with Disabilities Educ., Legal Def. Fund v. Bush*, 170 F. Supp. 2d 1205, 1209–10 (N.D. Fla. 2001) (injury flowing from challenged statute's direct impact on disabled voters' ability to vote conferred standing under NVRA).

Plaintiffs also fail to articulate a concrete injury under Count IV (misinterpretation of the NVRA, Compl. ¶¶ 121–35) and Count V (failure to furnish a hearing under O.C.G.A. § 21-2-229 and general failure to comply with state law, Compl. ¶¶ 136–52). As with their previous Counts, Plaintiffs again do not specify how they were injured or continue to be injured other than the Board's alleged shirking of its duties under state law. *See e.g.*, Compl. ¶¶ 27, 30. These claims, thus,

boil down to a generalized grievance with no concrete, particularized injury to support Plaintiffs' standing.

Moreover, in Count V, Plaintiffs assert that Mr. Frazier either received untimely notice of his voter challenge hearing or received no notice of a hearing. Compl. ¶¶ 28, 147–48.[4] However, the relief requested is not for redress in the form of a notice hearing, but rather an order by this Court that the Board generally "comply with Georgia state law" as applied to all prospective voter challengers and to threaten Defendants with sanctions and contempt of court sanctions. Compl. ¶ 152. Thus Count V contains the same infirmities as the rest of the Counts: it asserts a generalized grievance that Defendants are not in "strict compliance" with state law. Compl. ¶ 152.

2. Plaintiffs Have Failed to Demonstrate Statutory Standing Under the NVRA for Counts I, IIB, and IV.

Plaintiffs' claims invoking the NVRA, Counts I, IIB, and IV, fail for another independent reason: their failure to provide pre-suit notice prior to commencing a lawsuit.[5] The NVRA creates a private right of action for an "aggrieved" person to

[4] Plaintiffs characterize an email included in Paragraph 28 of the Complaint as supporting the allegation that "the FCDRE confirmed in writing to Mr. Frazier that it had violated Georgia state law." Compl. ¶¶ 28, 147–48. But that email does not say anything about the Board violating Georgia state law.

[5] Courts have reached different conclusions on the question of whether the NVRA's notice requirements are jurisdictional, and thus whether they are best addressed under Rule 12(b)(1) or 12(b)(6). *Compare League of Women Voters of Fla., Inc. v. Byrd*, 2023 WL 11763040, at *1 (N.D. Fla. July 10, 2023) (NVRA notice not

provide written notice of a statutory violation to the state's chief election official and provide an opportunity to cure the violation within the timeline established by statute before the aggrieved person files a lawsuit. 52 U.S.C. § 20510(b). As this Court has explained previously, "the notice provision is meant to give those violating the NVRA the chance "to attempt compliance with its mandates before facing litigation." *Ga. State Conf. of NAACP*, 841 F. Supp. 2d at 1335. Notice is adequate if it "(1) sets forth the reasons that a defendant purportedly failed to comply with the NVRA, and (2) clearly communicates that a person is asserting a violation of the NVRA and intends to commence litigation if the violation is not timely addressed." *Black Voters Matter Fund*, 508 F. Supp. 3d at 1293.

Courts further reject attempts from prospective plaintiffs to "piggyback" on notice of an NVRA violation provided by others. *Bellitto v. Snipes*, 221 F. Supp. 3d 1354, 1363 (S.D. Fla. 2016) (citing *Scott v. Schedler*, 771 F.3d 831 (5th Cir. 2014)).

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jurisdictional) *and Pub. Int. Legal Found. v. Benson*, 2022 WL 21295936, at *7 (W.D. Mich. Aug. 25, 2022) (same) *with Black Voters Matter Fund v. Raffensperger*, 508 F. Supp. 3d 1283, 1296 (N.D. Ga. 2020) ("[T]he Court finds that Plaintiffs failed to satisfy the NVRA's pre-suit notice requirement and thus at this time do not have statutory standing to sue under the NVRA") *and Ga. State Conf. of NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1335 (N.D. Ga. 2012) (same). Whether or not NVRA notice is jurisdictional, courts agree that failure to comply with NVRA notice requirements justifies dismissal. In accordance with the precedent of this Court, Plaintiffs move under Rule 12(b)(1), but in the alternative move under Rule 12(b)(6). *See Voice of the Experienced v. Ardoin*, 2024 WL 2142991, at *8 n.3 (M.D. La. May 13, 2024).

A plaintiff must *themselves* comply with the NVRA's notice requirement and cannot merely rely on a co-plaintiff's notice. *Id.*

Plaintiffs acknowledge that they were required to provide notice to Defendants of an alleged violation of the NVRA to exercise the NVRA's private right of action. Compl. ¶¶ 62–63. But for three reasons, they have failed to satisfy that requirement. *First*, Plaintiffs Complaint makes only one cursory reference to the required pre-suit notice under the NVRA, which fails to even allege that they met the required scope of notice under the Act. Compl. ¶ 2 ("Mr. Ferguson placed the FCDRE on notice that it was acting in violation of the NVRA on or about March 18, 2024, which is more than 90 days ago, and as of the date of this filing, the FCDRE has failed to come into compliance or otherwise correct its violation of the NVRA."). The Complaint does not provide any other details, including whether the notice informed the Board that Mr. Ferguson planned to commence litigation if the violation was not addressed, or even if the notice was written. As alleged, the notice is insufficient, and Plaintiffs' NVRA claims against the Board should be dismissed. *See Black Voters Matter Fund*, 508 F. Supp. 3d at 1293.

Second, the Complaint does not allege that Plaintiffs served written notice on the "chief election official and the State" as required by the NVRA. 52 U.S.C. § 20510(b)(1). Instead, the Complaint only alleges that "Mr. Ferguson placed *the FCDRE* on notice that it was acting in violation of the NVRA on or about March 18,

2024." Compl. ¶ 2. Notice that is not served on Mr. Raffensperger does not satisfy Section 11 of the NVRA. 52 U.S.C. § 20510(b)(1). Plaintiffs' NVRA claims should be dismissed based on improper notice.

Third, even if Mr. Ferguson provided proper notice under the NVRA, the Complaint contains no allegations that Mr. Frazier did the same. It is well-established that a plaintiff may not "piggyback" on the notice provided by another. *See Bellitto*, 221 F. Supp. 3d at 1363. As such, Mr. Frazier's NVRA claims must be dismissed on this ground alone.

3. *Because No Original Jurisdiction Exists, the Court Has No Basis for Exercising Supplemental Jurisdiction Over Plaintiffs' State Law Claims in Counts II-V.*

A complaint must contain "a short and plain statement of the grounds for the court's jurisdiction[.]" Fed. R. Civ. P. 8(a). A federal court may have original jurisdiction under a specific statutory grant, federal-question jurisdiction, or diversity jurisdiction. *Baltin v. Alaron Trading Corp.*, 128 F.3d 1466, 1469 (11th Cir. 1997).

In their Complaint, Plaintiffs aver the Court has subject matter jurisdiction over this case as it arises under federal law. Compl. ¶ 7. Plaintiffs further allege that the Court may exercise supplemental jurisdiction over the state law claims. Compl. ¶ 9; 28 U.S.C. § 1367 ("[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other

claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."). Counts II, IIB, III, IV, and V all invoke violations of state law and/or seek relief under state law. *See* Compl. ¶¶ 18, 20, 26, 27, 30.

But "for a federal court to invoke supplemental jurisdiction . . . it must first have original jurisdiction over at least one claim in the action." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 554 (2005). As demonstrated in detail above, Plaintiffs have failed to establish the existence of a case and controversy for any claim, including federal claims, under Article III. Therefore, they cannot maintain their state law claims (Counts II–V) as this Court lacks original jurisdiction over all federal law claims.

B. THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

The Court should dismiss Counts I–IV for failure to state a claim under federal and state law. Plaintiffs' claim arguing that the NVRA mandates systematic list maintenance on residency grounds within the 90-day quiet period is prohibited by Sections 8(c) and 8(d) of the NVRA. And to the extent, Plaintiffs demand the Board conduct their preferred form of list maintenance under state law, *e.g.*, Counts II, IIB, III, and IV, their requested relief is preempted by the NVRA. Const. Article VI, Clause 2; *Ariz. v. Inter Tribal Council of Ariz., Inc*., 570 U.S. 1, 5 (2013) (NVRA pre-empts contrary state law).

1. Count I Should Be Dismissed.

In Count I, Plaintiffs' request declaratory and injunctive relief under the NVRA for the Board's alleged failure to conduct a reasonable program to identify and remove dead voters and voters who no longer live in the county *before* the General Election. 52 U.S.C. § 20507(a)(4). Compl. ¶ 72, Prayer for Relief B, C. Count I should be dismissed in its entirety because the requested relief violates Sections 8(c) and 8(d) of the NVRA and fails to plead factual allegations that plausibly suggest an entitlement to relief, *Iqbal*, 556 U.S. at 683.

i. Section 8(c) Prohibits the Board from Acting on Plaintiffs' Residency Challenges Within the 90-day Quiet Period Before the General Election.

NVRA Section 8(a)(4), the provision Plaintiffs allege the Board violated, requires states and localities to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of" the "death of the registrant" or "a change in the residence of the registrant." 52 U.S.C. § 20507(a)(4)(A)-(B). But Section 8(c) circumscribes Section 8(a)(4). Section 8(c) provides that "any program the purpose of which is to systematically remove the names of ineligible voters from the list of eligible voters" on the basis of residency changes cannot be conducted within 90 days of a primary, general, or runoff election for federal office. 52 U.S.C. § 20507(c)(2). *See, e.g.*, *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1345–46 (11th Cir. 2014).

To the extent that Count I asks the Court to require Defendants to conduct a list maintenance program to remove voters who have allegedly changed residence prior to the General Election, the claim fails as a matter of law. Section 8(c) prohibits that relief. *See* Compl. ¶¶ 50–72. The 90-day clock began to run on August 7. Therefore, the Board may not remove voters on residency grounds pursuant to a systematic program, including non-individualized mass voter challenges, before the November 5 general election.[6] In response, throughout their Complaint, Plaintiffs offer a theory never before adopted by any other court and expressly rejected by the Department of Justice and existing caselaw. Plaintiffs contend that Section 8(c)'s 90-day quiet period applies only to state-run programs for systematic removals, not to challenges brought by private citizens who use data matching to identify groups of voters and then seek to have government officials engage in systematic removals of those same voters. *See, e.g.*, Compl. ¶ 126.

This claim fails as both a a matter of fact and a matter of law, as there cannot be removals without state action governed by Section 8(c). Courts to have addressed this issue have squarely rejected allegations identical to the one presented by the Plaintiffs in this case. In *Majority Forward v. Ben Hill Cnty. Bd. of Elections*, a

[6] Plaintiffs allege that Mr. Ferguson's residency challenges were rejected because of his use of a systematic program. *See, e.g.*, Compl. ¶ 127. Plaintiffs are asking the Court to require the Board to act on these challenges, and the NVRA, as discussed below, prohibits the Board from doing so on the basis of a systematic program.

Georgia federal district court found that it would likely violate the NVRA for a county board of elections to sustain a private voter challenge based on mass data-matching devoid of any individualize inquiry within 90 days of a federal election. 512 F. Supp. 3d 1354, 1369–70 (M.D. Ga. 2021). And in *North Carolina State Conference of the NAACP v. North Carolina State Board of Elections*, the court similarly concluded that thousands of residency challenges mounted by a private elector within the 90 days before the general election "constitutes the type of 'systematic' removal prohibited by the NVRA." 2016 WL 6581284, at *8 (M.D.N.C. Nov. 4, 2016). The court reasoned "though the State Board is correct that individuals initiated the challenge process at issue, these individuals cannot administer hearings related to the challenges, make findings of probable cause, and actually remove a voter from the voter rolls, which is the injury alleged here." *Id.* The court went on, "thus, the challenges would have no effect on the voter if such challenges were not processed and sustained by the County Boards." *Id.* Applying the same reasoning here dooms Plaintiffs' argument that Section 8(c) does not apply to third-party challenges under 229(a).

This is the only way that the NVRA can be read. That is because the problems sought to be avoided by the 90-day restriction—prejudice to improperly removed voters and burdens on election officials in the days leading up to the election—are the same whether the systematic list maintenance is initiated by the election board,

by an individual's request, or by order of a court. Indeed, DOJ's recent guidance expressly clarifies that the 90-day "deadline also applies to list maintenance programs based on third-party challenges derived from any large, computerized data-matching process." Dep't of Justice, *Voter Registration List Maintenance: Guidance Under Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507* (Sept. 2024), https://www.justice.gov/crt/media/1366561/dl [hereinafter "DOJ Guidance"]. And, the Eleventh Circuit has explained broadly that the "the 90 Day Provision strikes a careful balance: It permits systemic removal programs at any time except for the 90 days before an election because that is when the risk of disenfranchising eligible voters is the greatest." *Arcia*, 772 F.3d at 1346 (prohibiting state from removing alleged non-citizens from voter registration list within 90-day quiet period). Plaintiffs' conclusory—and incorrect—legal allegations do not state a claim upon which relief can be granted.

ii. Under Section 8(d), the Board Must Provide Proper Notice to Challenged Voters Identified by Plaintiffs.

Plaintiffs' requested relief, that the Board immediately act and remove the challenged voters, is also straightforwardly prohibited by the NVRA. Section 8(d) of the NVRA prohibits states from effectuating any immediate removals of registrants based on residency without following proper notice process. 52 U.S.C. § 20507(d)(1). Under Section 8(d), a state may remove a person from the voter rolls

on residency grounds only in one of two circumstances: upon (1) the person's written confirmation of a change in residence to a place outside the jurisdiction, or (2) completion of the notice-and-waiting process described in Section 8(d)(2). *Id.* §20507(d)(2). The notice process provides that a registrant may not be removed from the rolls unless they fail to respond to a postage prepaid and pre-addressed return card, sent by forwardable mail, and subsequently do not vote in two federal general election cycles. *See* §20507(d)(1). *See Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 762 (2018). In sum, Section 8(d) of the NVRA prohibits the relief sought by Plaintiffs in Count I.

The Complaint does not contain a single allegation that proper notice has been given to any of the challenged voters. For that reason alone, Count I must be dismissed.

iii. Plaintiffs Offer No Factual Allegations to State a Plausible Claim to Relief.

Count I alleges that the Board has violated Section 8(a) of the NVRA by failing to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters." Compl. ¶ 72; 52 U.S.C. § 20507(a)(4)(A)-(B). Plaintiffs' requested relief—the Board must undertake a general program to remove voters who have died and/or moved before the General Election—rests on one threadbare, out-of-context factual allegation. Plaintiffs allege

more than 20 times in the Complaint that a former Chairperson of the Board said at one point that the Board does not independently search for dead people, felons, people who live out of state. Compl. at 1, 2, ¶¶ 14, 22, 33-35, 68-71, 77-81, 112, 117, 140. The video clip taken from Plaintiff Frazier's own X (formerly Twitter) post, dated November 15, 2023, provides no other context for the statement. Besides this quote, Plaintiffs allege no other facts shedding light on the Board's process or lack thereof, or timing of its list maintenance activities.

Plaintiffs go on, claiming that if the Board "fulfilled its obligations" under the NVRA, then Plaintiffs would not have been able to identify thousands of allegedly ineligible registrants through their data matching in the first place. Compl. ¶¶ 23, 71, 80, 141. This allegation also does nothing to support the extraordinary relief requested in this Count. In fact, the allegation assumes that Plaintiffs' nearly 2000 challenges are accurate when there is a high likelihood that these challenges, especially if based on the National Change of Address Database, are inaccurate. *Arcia*, 772 F.3d at 1346 (noting systematic programs undertaken on eve of election increase risk that voters may be misidentified due to unintentional mistakes in Secretary's data-matching process); *Majority Forward*, 512 F. Supp. 3d at 1369 (noting inaccuracies in the thousands of residency challenges brought based on database matching between the voter list and the voter's name in the U.S. Postal Service's National Change of Address database).

2. Count II Should Be Dismissed.

In Count II, Plaintiffs allege that the Board violated O.C.G.A. § 21-2-228(a), which imposes a duty on the board of registrars of each county or municipality "of examining from time to time the qualifications of each elector of the county or municipality whose name is entered upon the list of electors . . . ." *See* O.C.G.A. § 21-2-228(a). To the extent that Plaintiffs seek relief under state law in the form of an order that the Board systematically remove voters on residency grounds, that relief is preempted by Sections 8(c) and 8(d) of the NVRA.

Furthermore, Plaintiffs' charge that the Board failed to comply with Section 228(a), again, rests on the same tired factual allegation—a soundbite from the former Chairperson of the Board from November 15, 2023. Compl. ¶¶ 78–80. This fact does not warrant the declaratory, injunctive, or mandamus relief Plaintiffs' seek. Compl. ¶¶ 81–82, Prayer for Relief (D). Thus, Count II—violation of O.C.G.A. § 21-2-228(a)—should be dismissed.

3. Count IIB Should Be Dismissed.

In Count IIB, Plaintiffs seek a writ under the All Writs Act[7] compelling the Board to comply with list maintenance duties under Section 8(a)(4) of the NVRA

[7] The All Writs Act provides that "[the Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law," and further provides that "[a]n alternative writ or rule nisi may be issued by a justice or judge or a court [with] jurisdiction.]" 28 U.S.C. § 1651.

and O.C.G.A. § 21-2-228(a). The specific writ sought is a writ of mandamus, which confers on a district court the power "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. By all accounts, mandamus "is an extraordinary" and "equitable remedy" "which should be utilized only in the clearest and most compelling of cases." *Cash v. Banhart*, 327 F.3d 1252, 1257 (11th Cir. 2003). Mandamus relief is appropriate only when: (1) the plaintiff has a clear right to the relief requested; (2) the defendant has a clear duty to act; and (3) "no other adequate remedy [is] available." *Id.*

Plaintiffs fail on all factors. The Board does not owe any legal duty to Plaintiffs and is expressly prohibited from granting the relief that they seek. Sections 8(c) and 8(d) of the NVRA forbid removing voters on residency grounds within the 90-day period before the General Election. Section 8(a)(4) requires only a "reasonable" program of list maintenance. Use of the word "reasonable" demonstrates that there inherently is discretion afforded under that provision, and thus mandamus is inappropriate. And § 21-2-228(a) does not place any affirmative duty on the Board, contrary to Plaintiffs' allegations, to remove voters on any grounds. Indeed, § 21-2-235 of the Georgia Election Code lays out a process for placing voters who have change residence on the inactive voter list instead of outright purging these voters as Plaintiffs request. Because the Complaint contains no allegations to the contrary, there is no basis for the Court to draw a reasonable

inference that mandamus is appropriate here. Nor do Plaintiffs offer any facts that they exhausted all other avenues of relief. The Court should therefore dismiss Count IIB.

4. Count III Should Be Dismissed.

Under Count III, Plaintiffs seek mandamus relief under state law, O.C.G.A. § 9-6-20, requesting the Board "examine the qualifications of each elector" as required under O.C.G.A. § 21-2-228 and "remove all ineligible voters from its voter roll before the November 5, 2024 election." Compl. ¶ 120 (emphasis in the original). As discussed under Count IIB, the NVRA prohibits the relief—immediate removal of voters on residency grounds. Furthermore, the Georgia Election Code itself does not create any affirmative duty on the Board to conduct list maintenance and remove "**all ineligible voters**" immediately before the General Election. And the very section Plaintiffs cite directs that the Board examine these qualifications "from time to time," O.C.G.A. § 21-2-228(a), a directive completely at odds with the particular timeframe they insist upon, demonstrating that there is no such clear legal duty sufficient to support mandamus.

Like federal mandamus, mandamus under state law is considered "extraordinary relief" and does not issue against a public officer unless discretion "is grossly abused." *Soloski v. Adams*, 600 F. Supp. 2d 1276, 1289 (N.D. Ga. 2009). Under applicable Georgia law, "mandamus will issue against a public officer: (1)

when there is a clear legal right to the relief sought; or (2) when there has been a gross abuse of discretion." *Id.* (citing *Jackson Cnty. v. Earth Res., Inc.*, 627 S.E.2d 569, 571 (Ga. 2006)). Plaintiffs have not adequately pleaded any allegations to support granting this extraordinary relief under state law. The Court should dismiss Count III.

5. Count IV Should Be Dismissed.

Under Count IV, Plaintiffs seek declaratory relief against the Board and Secretary Raffensperger's alleged "misapplication" of the NVRA's 90-day provision to Section 229(a) challenges. Compl. ¶ 135. Plaintiffs contention that "a 90-day rule would be inapplicable to a challenge against voters which was created by a data-matching process," conflicts with the plain text of Section 8(c).

As detailed above, Plaintiffs' legal conclusion that the 90-day rule does not apply to third-party database matching challenges under Section 229(a) is unsupported by any legal authority. This conclusion is further contradicted by both binding 11th Circuit precedent, *Arcia*, 772 F.3d at 1344 (Section 8(c) applies to programs that "use[] a mass computerized data-matching process") and recent DOJ guidance, DOJ Guidance at 4. Furthermore, Plaintiffs have provided no factual basis for alleging that the Board does not maintain accurate voter rolls or for arguing that it must be ordered to investigate its lists for ineligible voters. Thus, the Court should dismiss Count IV.

CONCLUSION

For the foregoing reasons, the Court should dismiss all Counts in Plaintiffs' Complaint.

Dated: September 12, 2024

Respectfully submitted,

By: /S/ Gerald Weber ___

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**Motion for admission pro hac vice forthcoming*

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1, the undersigned counsel hereby certifies that this document has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1.

Dated this 12th day of September 2024.

/s/ Gerry Weber
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EXHIBIT 4

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

JASON FRAZIER and EARL FERGUSON, *Plaintiffs*, v. FULTON COUNTY DEPARTMENT OF REGISTRATION AND ELECTIONS, SHERRI ALLEN, AARON JOHNSON, MICHAEL HEEKIN, AND TERESA K. CRAWFORD, individually, and in their official capacities as members of the Fulton County Department of Registration and Elections, KATHRYN GLENN, individually, and in her official capacity as Registration Manager of the Fulton County Department of Registration and Elections, BRAD RAFFENSPERGER, in his official and individual capacities. *Defendants.*	)	Case No. 1:24-cv-03819

DECLARATION OF NICHOLA HINES

Pursuant to 28 U.S.C. § 1746, I, Nichola Hines, declare as follows:

1. I am the President of the League of Women Voters of Georgia ("LWVGA" or "the League") and also a member of my local League, the League of Women Voters of Atlanta-Fulton County. I am also a resident and registered voter in Fulton County.

2. I am over 18 years of age, and I am competent to make this declaration.

3. I have personal knowledge of the matters stated herein and would testify to the same if called as a witness in Court.

4. The LWVGA is a non-profit, nonpartisan, grassroots, community-based, membership organization that has worked for the last 103 years to ensure that every person has the desire, the right, the knowledge, and the confidence to participate in our democracy. The LWVGA has 13 local Leagues and nearly 700 members who are dedicated to their mission of empowering voters and defending democracy. LWVGA's membership includes members that reside in Fulton County. Each local League is a member of LWVGA.

5. From the LWVGA's inception, members have promoted good government by studying issues, advocating for reforms, and, through the Observer Corps, observing and reporting on the work of all levels of government. The LWVGA is committed to registering voters, regardless of their political affiliation, and is particularly proud of its work with other Georgia civic engagement and voting rights advocates in registering new American citizens at citizenship ceremonies.

6. As part of its mission, the LWGVA advocates for expansion of voting opportunities, including through absentee by mail voting, early in-person voting, and election day voting.

7. The LWVGA expends significant resources in furtherance of its voting-related mission, including by organizing voter registration drives, educating the public about the voting process, engaging in mass-mailing campaigns targeted at voter education and voter registration, and assisting voters who have questions or need help navigating the voting process—including voters who are the subject of registration challenges. LWVGA also trains Board of Election observers who attend registration challenge hearings.

8. LWVGA engages in each of these programs in Fulton County through the Atlanta-Fulton County League. With respect to the upcoming November 5, 2024, the LWVGA has participated in numerous voter registration drives including in Fulton County and is mailing thousands of postcards to Georgians including in Fulton County who are not active voters—particularly women between the ages of 18-34 and Black men to encourage them to confirm their registration status ahead of the upcoming General Election. LWVGA intends to continue its outreach and voter education work throughout the 2024 election cycle and beyond.

9. I am aware through my attorneys that Plaintiff has filed litigation, seeking, among other things, a declaratory judgment that the National Voter Registration Act of 1993 ("NVRA") protections against voter purges within 90-days

of an election do not apply to certain challenges initiated by individuals under Georgia law.

10. I also understand Plaintiffs are asking the Court to remove potentially thousands of voters from the Fulton County rolls ahead of the November 5, 2024 election.

11. I am concerned that Plaintiffs' litigation, if successful, risks potentially disenfranchising League members in Fulton County, and could result in the disenfranchisement of thousands of eligible voters in Fulton County and across the state.

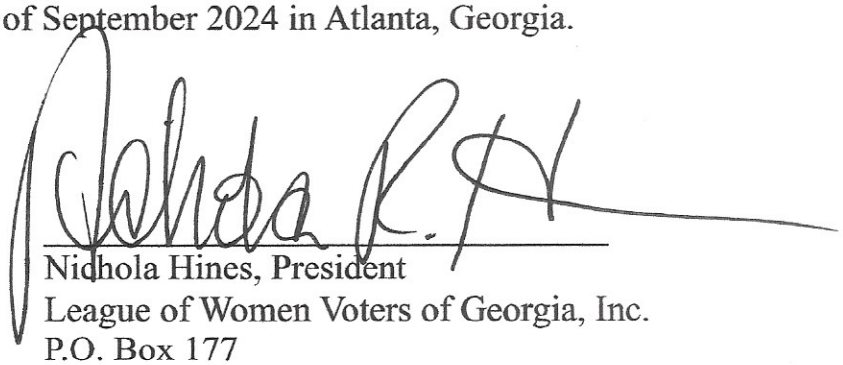
12. I am concerned that a legal ruling that the NVRA's prohibition against list maintenance within 90-days of a federal election does not apply to certain third-party challenges would invite chaos into the voting process where clear bounds have previously existed. I am also concerned that it would undermine voters' confidence in being registered and able to participate in the voting process, thus impacting their willingness to vote in future elections and undermining one of the LWVGA's organizational goals.

13. Declaring that the Fulton County Board of Registration and Elections can remove voters within the 90-day period of a federal election would also force the League to have to dedicate additional resources to assisting voters with

13. Declaring that the Fulton County Board of Registration and Elections can remove voters within the 90-day period of a federal election would also force the League to have to dedicate additional resources to assisting voters with responding to voter challenges. Because of LWVGA's limited resources, this effort would come at the expense of its other voter education, voter registration, and election protection efforts. Engaging in these voter-challenge related activities would involve launching a new campaign that would also divert staff time, including the time of interns and volunteers, from existing priorities.

14. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 12th day of September 2024 in Atlanta, Georgia.



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