

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

NEW GEORGIA PROJECT, *et al.*

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his
official capacity as Secretary of State of
the State of Georgia, *et al.*

Defendants.

Civil Action No. 1:24-cv-03412-SDG

**SPALDING COUNTY DEFENDANTS' MOTION TO DISMISS PLAINTIFFS'
FIRST AMENDED COMPLAINT**

Defendants Ben Johnson, James Newland, Roy McClain, James A. O'Brien, and Dexter Wimbish in their official capacities, as Members (current and former) of the Spalding County Board of Elections and Voter Registration (collectively, the "Spalding County Defendants")¹ move to dismiss Plaintiffs' Consolidated First

¹ Defendants Roy McClain and James A. O'Brien are no longer members of the Spalding County Board of Elections and Voter Registration. The Spalding County Defendants consent to substitution of the new members, Chris Piland and Lee Howell, in their official capacities.

Amended Complaint [Doc. 155] in its entirety pursuant to Fed. R. Civ. P. 12(b)(1) and (6) because Plaintiffs lack standing and fail to state a claim upon which relief may be granted.

In support of this motion, Spalding County Defendants hereby adopt the arguments set forth in State Defendants' Brief in Support of Motion to Dismiss [Doc. 168-1]. But the Spalding County Defendants do not adopt the State Defendants' arguments regarding traceability and redressability in Sections II(D) and II(E) of the State Defendants' brief.

Plaintiffs make one claim (Claim III) only against certain county defendants, including the Spalding County Defendants. That claim alleges, without any specific factual allegations as to what alleged conduct of Spalding County they are referring to, that Spalding County Defendants "have engaged in an ongoing practice of immediately removing voters from the registration list on the ground of an alleged change of address" in violation of Section 8(d) of the National Voter Registration Act ("NVRA"). [Doc. 155 ¶ 274]. Similar to Plaintiffs' other claims, Claim III fails because Plaintiffs lack standing as set forth in State Defendants' Motion to Dismiss. Furthermore, State Defendants point out in Section IV(B) of their brief the reasons that

Count I, which also alleges violations of the NVRA Section 8(d) removal process, fails to state a claim and should be dismissed. Those same reasons similarly apply to Count III, and they are adopted herein as to Count III.

Moreover, Plaintiff's assertion in Count III that the Spalding County Defendants are "immediately removing voters" in handling O.C.G.A §§ 21-2-229 and 230 challenges is demonstrably untrue. Spalding County Defendants do not remove voters ("automatically" or otherwise) due to a change in residence other than through the NVRA process. Rather, Spalding County follows the procedures as laid out in §§ 21-2-229 and 230, respectively, which both require hearings to consider the merits of the challenges. See O.C.G.A §§ 21-2-229(b) and 230(b). This is after notice is provided to the electors whose status on the election rolls and/or ability to vote in an election is being challenged.

Indeed, in their own Consolidated Amended Complaint, Plaintiffs attached "Exhibit 3 Spalding County Defendants," which includes a copy of the meeting minutes for the Spalding County Defendants Special Called Meeting of August 9, 2022. Under the item "Public Hearing", the minutes state as follows:

Billie Preston referenced the July 27, 2022, Challenged Voter List that Ms. Collins had researched and presented, which included 94 persons. These were presented to Board Members in packets for this Special Called Meeting. The document shows everyone's current voting status and the date last voted. **The County is only required by law to send notices to the last known Spalding County address; however, whenever possible, these were sent to new addresses, as well. Staff received responses by email and telephone, and 20 were returned.** Based on the findings of staff, it is recommended that the Board remove these 94 identified voters from Spalding County voter registrations. Of those contacted, no one confirmed they wanted to remain a voter here.

[Emphasis supplied] [Doc. 155, Exhibit 3]

Thus, by incorporating Exhibit 3 to their Amended Complaint, Plaintiffs essentially have disproved their own allegation.

For all the reasons set forth in State Defendant's Motion to, as adopted herein, this Court should dismiss Plaintiffs' claims.

(signature appears on following page)

This 17th day of January, 2025.

BECK, OWEN, & MURRAY
Attorneys for the Spalding County
Defendants

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LOCAL RULE 5.1C CERTIFICATION

By signature below, counsel certifies that the foregoing pleading was prepared in Times New Roman, 14-point font in compliance with Local Rule 5.1C.

This 17th day of January, 2025.

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Attorneys for the Spalding County
Defendants

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CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

This 17th day of January, 2025.

BECK, OWEN, & MURRAY
Attorneys for the Spalding County
Defendants

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