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

NEW GEORGIA PROJECT, *et. al.,*	:	
	:	
Plaintiffs,	:	Civil Action No.
	:	1:24-cv-03412-SDG
vs.	:	
	:	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, *et. al.,*	:	
	:	
Defendants.	:	
	:	

COLUMBIA COUNTY DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT and INCORPORATED BRIEF

Now come Defendants Columbia County Board of Elections, Ann Cushman, Wanda Duffie, and Larry Wiggins in their official capacities as members of the Columbia County Board of Elections (collectively, "Columbia County Defendants"), and respectfully move this Court to dismiss them from Plaintiffs' Consolidated First Amended Complaint for Injunctive and Declaratory Relief (the "Amended Complaint") [Doc. 155]. This motion to dismiss is pursuant to Fed. R. Civ. P. 12(b)(1) based on Plaintiffs' lack of standing to sue the Columbia County Defendants, and pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted against the Columbia County Defendants.

OVERVIEW

The Amended Complaint is a consolidation and expansion of three previously filed complaints, none of which named the Columbia County Defendants as parties to those actions. In general terms, the Amended Complaint alleges that various provisions of law adopted by the Georgia General Assembly ("Senate Bill 189") violate the National Voter Registration Act of 1993, 52 U.S.C. § 20501 *et. seq.* (the "NVRA"). [Doc. 155]. Of the eight Plaintiffs stating claims in the Amended Complaint, only two Plaintiffs -- the Georgia State Conference of the NAACP ("NAACP") and the Georgia Coalition for the People's Agenda, Inc. ("GCPA") -- have sued the Columbia County Defendants. [Doc. 155 ¶ 35]. The only claims made against the Columbia County Defendants are found in Counts I, II and IV of the Amended Complaint. [Doc. 155]. Each of these Counts allege a violation of Section 8 of the NVRA, 52 U.S.C. § 20507, and allege that Plaintiffs can maintain a private right of action against the Columbia County Defendants under the NVRA.

The Amended Complaint does not allege, state or identify any act or omission that any of the Columbia County Defendants themselves *actually undertook* as the basis of the claims made by these two Plaintiffs, nor does the mandatory NVRA notice letter of July 10, 2024 that preceded the filing of the Amended Complaint. [Doc. 155-3]. Rather, Plaintiffs NAACP and GCPA simply lumped the Columbia County Defendants in with sixteen other county election boards and their members (referred

to by Plaintiffs in aggregate as "the Seventeen County Board Member Defendants" in the Amended Complaint) to make unspecified broad allegations of speculative potential future harm as discussed more fully below.

The grounds of this Motion to Dismiss are summarized as follows:

First, the Amended Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) because Plaintiffs NAACP and GCPA lack standing to sue the Columbia County Defendants. The United States Supreme Court recently made clear that every plaintiff must demonstrate standing for each claim "against each defendant," and that standing is not "dispensed in gross." *Murthy v. Missouri*, 603 U.S. 43, 61, 144 S. Ct. 1972, 219 L. Ed. 2d 604 (2024). Plaintiffs here do not allege that any of the Columbia County Defendants actually took an action to create an injury in fact to Plaintiffs, nor can they allege that the threat of any such action is imminent.[1] These plaintiffs therefore do not satisfy the "injury in fact" or the "fairly traceable" requirements of establishing standing. See *Murthy*, 603 U.S. at 608 (standing requires a plaintiff to establish that she has suffered an "actual or imminent" injury that is "fairly traceable to the challenged action"). "Because standing is jurisdictional, a dismissal for lack of standing has the same effect as a dismissal for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1)." *Stalley v. Orlando Reg'l Healthcare Sys.*, 524 F.3d 1229,

[1] The NVRA (as applicable to the Amended Complaint) only applies to elections for federal office. 52 U.S.C. § 20507. No such election is scheduled for this year.

1232 (11th Cir. 2008) (quoting *Cone Corp. v. Fla. Dep't of Transp.*, 921 F. 2d 1190, 1203 n.42 (11th Cir. 1991)).

Second, the Amended Complaint should be dismissed under Fed. R. Civ. P. 12(b)(6) because it fails to state a claim for relief "that is plausible on its face" as to the Columbia County Defendants. See *Ga. Ass'n of Latino Elected Offs., Inc. v. Gwinnett Cnty. Bd. Of Registration & Elections* ("*GALEO*"), 36 F.4th 1100, 1113 (11th Cir. 2022). While a complaint attacked by a Rule 12(b)(6) motion does not need detailed factual allegations, "a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Ga. State Conf. of the NAACP v. Kemp*, 841 F. Supp. 2d 1320 (2012) (punctuation altered for clarity) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). As shown below, the allegations which these two Plaintiffs make against the Columbia County Defendants fail to state a claim that meets the *Twombly* standard (and the other six Plaintiffs literally do not bring a cause of action against these Defendants). The Amended Complaint therefore should be dismissed as to the Columbia County Defendants. *See* Fed. R. Civ. P. 12(b)(6).

Third, the Amended Complaint should be dismissed under Rule 12(b)(1) and Rule 12(b)(6) because Plaintiffs failed to comply with the mandatory notice requirements of 52 U.S.C. § 20510(b). To maintain a private right of action under the

NVRA, each plaintiff must be "aggrieved by a violation" of the NVRA and must "provide written notice of the violation" within a set period of time before bringing suit. 52 U.S.C. § 20510(b)(1), (2). Proper pre-suit notice of claims under the NVRA is mandatory, and dismissal is required if it is not given. *Kemp*, 841 F. Supp. 2d at 1335 (citing *Broyles v. Texas*, 618 F. Supp. 2d 661, 692 (S.D. Tex. 2009)).[2]

As shown below, the only effective NVRA pre-litigation notice sent to the Columbia County Defendants alleged that the General Assembly injured Plaintiffs by adopting Senate Bill 189. [Doc. 155-3] (the "July 10 Notice Letter"). The July 10 Notice Letter failed to allege that any Plaintiff was "aggrieved" by any "violation" of the NVRA caused by any Columbia County Defendant however. In fact the July 10 Notice Letter does not even reference the Columbia County Defendants or any alleged action (or inaction) by them at all, other than simply stating in a footnote that the letter was also addressed to "Columbia . . . count[y]" and was emailed to "their board of elections and registrars." [Doc. 155-3 fn.1].

By failing to give proper notice of any action or inaction by any of the Columbia County Defendants which aggrieved any Plaintiff, these Plaintiffs failed to comply with the statutory requirements of the NVRA to maintain a private cause of action suit

[2] No pre-suit notice is required if the alleged violation occurred within 30 days before the date of an election for Federal office. 52 U.S.C. § 20510(b)(3). Plaintiffs do not contend that this provision applies however. See [Doc.155-3 p.8].

against the Columbia County Defendants and thus do not have standing. The Amended Complaint therefore should be dismissed pursuant to Rule 12(b)(1). Plaintiffs then compound their error by adopting the July 10 Notice Letter as the sole description of the violations allegedly conducted by the Columbia County Defendants in their Amended Complaint [Doc. 155 ¶ 106] and thus also fail to state a claim upon which relief can be granted even if standing existed. Accordingly, the Amended Complaint should be dismissed under Rule 12(b)(6) as well.

Fourth, the Amended Complaint fails to state a claim upon which relief can be granted under Rule 12(b)(6) because the NVRA does not give Plaintiffs a private right of action against the Columbia County Defendants. While the express text of the NVRA grants broad rights of action to the Attorney General of the United States to bring any injunctive and declaratory action "necessary to carry out this Act" without limitation, Congress expressly provided a more limited private right of action under the NVRA. Compare 52 U.S.C. § 20510(a), (b). Specifically, the text of the NVRA's private right of action provision requires a putative plaintiff to "provide written notice of the violation to the chief election official of the State involved," and if "the violation" is not corrected then the private party may bring a civil action "with respect to the violation" in that notice. 52 U.S.C. § 20510(b)(1), (2). Under Georgia law, "[t]he Secretary of State is designated as the chief state election official to coordinate the

responsibilities of this state under the [NVRA] as required by 52 U.S.C. Section 20509." O.C.G.A. § 21-2-210.

While the NVRA's private right of action provision provides an express procedure to give notice to and then sue Georgia's chief election official, Congress did not provide a similar express procedure or right of action against counties, municipalities, or other officials beyond the chief election official of the State. As detailed below, Congress knows how to grant express private rights of action against "any person" or "every person" who violates a law if it wishes to do so, yet chose not to do so here. The fact that Congress instead provided a limited private right of action targeting one particular party as the object of a plaintiff's claim, but excluded listing others, also prevents implying such a private cause of action into the NVRA. See *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254, 117 L. Ed. 2d 391, 112 S. Ct. 1146 (1992 ("We have stated time and time against that courts must presume that a legislature says in a statute what it means and means in a statute what it says"); *Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1171 n.15 (11th Cir. 2003) ("This principle of statutory construction reflects an ancient maxim – expressio unius est exclusio alterius . . . .") (citations omitted). The Amended Complaint thus should be dismissed because there is no express or implied statutory private right of action against the Columbia County Defendants under the NVRA.

In support of this Motion to Dismiss, the Columbia County Defendants set forth the arguments below and also adopt State Defendants' Brief in Support of Motion to Dismiss, except for Sections II(D) and II(E) regarding traceability and redressability. [Doc.168-1]. The Columbia County Defendants also incorporate the arguments of the other Seventeen County Board Member Defendants which are being filed roughly contemporaneously herewith.

ARGUMENT

I. Plaintiffs NAACP and GCPA lack standing to sue the Columbia County Defendants in Counts I, II, and IV because they have failed to allege an injury in fact that satisfies the "traceability" requirement.

In order for this Court to have subject-matter jurisdiction over this dispute, both Plaintiff NAACP and Plaintiff GCPA must establish that they have standing to assert the claims made by them against the Columbia County Defendants.

> Article III of the Constitution limits the subject-matter jurisdiction of federal courts to "Cases" and "Controversies." "To have a case or controversy, a litigant must establish that he has standing." The "irreducible constitutional minimum" of standing consists of (1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision.

GALEO, 36 F.4th at 1113 (citations omitted). These requirements "constitute 'an essential and unchanging part of the case-or-controversy requirement of Article III.'" *FDA v. All. for Hippocratic Med.,* 602 U.S. 367, 380, 144 S. Ct. 1540, 219 L. Ed. 2d 121 (2024) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)).

To satisfy the "traceability" requirement, a plaintiff must demonstrate "a fairly traceable connection between the plaintiff's injury and the complained of conduct of the defendant." *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005) (quoting *Parker v. Scrap Metal Processors, Inc.*, 386 F.3d 993, 1003 (11th Cir. 2004)). "Moreover, the injury must be actual or imminent, not speculative – meaning that the injury must have already occurred or be likely to occur soon." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409, 133 S. Ct. 1138, 185 L. Ed. 2d 264 (2013). Standing is not "dispensed in gross" against a slew of defendants just because a plaintiff wishes to lump them together, but rather must be shown as to each defendant individually. *Murthy*, 603 U.S. at 61.

The Amended Complaint does not identify or describe any actual injury in fact that was caused by an actual action or inaction taken by any of the Columbia County Defendants. [Doc. 155, *passim*]. In fact, outside of the caption and the enumeration of parties, *the Amended Complaint does not refer to the Columbia County Defendants at all.* [Doc. 155, *passim*]. Rather, the Columbia County Defendants are simply listed as one of the "Seventeen County Board Member Defendants" with no identification of what these defendants actually did or actually failed to do, or why Plaintiffs believe that these Seventeen County Board Member Defendants are any different than the other 142 potential county board member defendants in the State of Georgia.

A review of the three Counts brought against the Columbia County Defendants shows that these Plaintiffs fail to allege anything beyond speculative future harm. Plaintiffs' Count I alleges that violations of the NVRA *may* occur *if* a Defendant removed a voter from the election rolls based upon a law adopted by the Georgia General Assembly in Senate Bill 189 (O.C.G.A. § 21-2-230), yet fails to allege that the Columbia County Defendants actually took such a step (let alone to a registered voter the NAACP or GCPA purports to represent). [Doc. 155 ¶¶ 249-260]. Similarly, Count II alleges that violations of the NVRA again *may* occur *if* a Defendant removed a voter from the election rolls *if* it adjudicated challenges made under two provisions of law in Senate Bill 189 (O.C.G.A. §§ 21-2-229, 21-2-230), but yet again fails to allege that the Columbia County Defendants actually took such steps (let alone to a person these Plaintiffs purportedly represent). [Doc. 155 ¶¶ 261-270]. Likewise, Count IV alleges that violations of the NVRA *may* occur *if* a Defendant "forces unhoused voters to receive election-related mail . . . at their county registrar's office" under a third provision of law adopted in Senate Bill 189 (O.C.G.A. § 21-2-217(a)(1.1)), yet fails to allege that these Defendants actually took such a step (let alone to a person these Plaintiffs purportedly represent). [Doc. 155 ¶¶ 276-279]. And as previously stated, there is no showing of an imminent threat of such actions being taken because there is no scheduled federal election this calendar year for which the NVRA applies. See *Clapper*, 588 U.S. at 409.

The United States Supreme Court has made it abundantly clear that standing is not dispensed in gross against a group of defendants just because a plaintiff thinks that they may be similar in some unarticulated form or fashion. Rather, the burden is on each plaintiff individually to establish standing as to each defendant individually. *Murthy*, 603 U.S. at 61. "Plaintiffs must demonstrate standing for each claim that they press against each defendant, and for each form of relief that they seek." *Id.* This requires a "threshold showing" that "a particular defendant" engaged in challenged conduct. *Id.* Defendants may not be treated "as a monolith." *Id.* at 69. Rather, the Court "must confirm *each* Government defendant continues to engage in the challenged conduct." *Id.* (italics supplied by the Court). "Heeding these conditions is critically important in a sprawling suit like this one." *Id.* at 61. Plaintiffs fail to carry their burden to establish these "essential and unchanging" requirements of standing. See *Hippocratic Med.*, 602 U.S. at 380.

Indeed, it is clear from the Amended Complaint that if these two Plaintiffs suffered any injury in fact, that injury is not fairly traceable to the Columbia County Defendants but rather is traceable (if at all) to the Georgia General Assembly. Both the NAACP and GCPA allege a diversion of resources injury as their basis for standing. [Doc. 155 ¶¶43, 53.] Yet the plain text of the Amended Complaint shows each of these alleged injuries are due to Senate Bill 189 itself. Both the NAACP and GCPA allege that their injuries are due to changes in the law adopted by the General

Assembly. See [Doc. 155, ¶¶43, 53.] Neither Plaintiff alleges that they had to divert resources as a result of any action by the Columbia County Defendants, and neither alleges that they have a member in Columbia County that was adversely impacted by Senate Bill 189. In short, neither Plaintiff alleges its injury is traceable to any challenged action or conduct of the Columbia County Defendants and does not allege that it was so injured in its Amended Complaint.

The Amended Complaint thus fails to articulate an actual or imminent "concrete and particularized" injury in fact that is fairly traceable to any of the Columbia County Defendants. Standing may not be based on speculation and conjecture that the Columbia County Defendants may engage in challenged conduct in the future as Plaintiffs try to suggest. *Murthy*, 603 U.S. at 69-70. Plaintiffs thus lack standing to sue the Columbia County Defendants and the Amended Complaint should be dismissed for lack of subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1).

II. Plaintiffs' Amended Complaint does not state a claim upon which relief may be granted against the Columbia County Defendants.

"[W]hile a plaintiff may both lack standing and fail to state a claim, it is also true that a plaintiff can meet the requirement for constitutional standing but nonetheless fail to state a claim." *Carpenters Pension Fund of Illinois v. MiMedx Group, Inc.*, 73 F.4th 1220, 1240 (11th Cir. 2024).

> [T]o survive a motion to dismiss under Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. Establishing plausibility requires

more than a sheer possibility that a defendant has acted unlawfully.

GALEO, 36 F.4th at 1116 (internal citations and quotations omitted for clarity).

"Factual allegations must be enough to raise a right to relief above the speculative level . . . The pleading must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action." *Twombly*, 550 U.S. at 555 (punctuation altered for clarity) (*citing* 5 C. Wright & A Miller, *Federal Practice and Procedure* § 1216, pp 235-236 (3d ed. 2004)). The Amended Complaint [Doc. 155] does not contain the necessary "sufficient factual matter," *GALEO*, 36 F.4th at 1116, to survive a Rule 12(b)(6) motion. In fact, it does not allege any specific action of the Columbia County Defendants at all, and merely speculates that something may have or may someday occur to support a claim for injunctive relief. The sheer possibility that the Columbia County Defendants may act unlawfully does not establish the "plausibility" needed to state a claim upon which relief can be granted against the Columbia County Defendants. See *Clapper*, 568 U.S. at 401 (a plaintiff must establish a sufficient likelihood of future injury when seeking prospective relief such as an injunction).

For the reasons stated herein, Plaintiffs' Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

III. Plaintiffs NAACP and GCPA fail to meet the "private right of action" requirements of the NVRA.

If Plaintiffs do not provide pre-suit notice of NVRA violations, they fail to establish standing. See 52 U.S.C. § 20510; *Kemp*, 841 F. Supp. 2d at 1335. In such a case, dismissal is warranted. *Kemp*, 841 F. Supp. 2d at 1335. Here, all of the claims against the Columbia County Defendants in the Amended Complaint are brought solely under the NVRA. [Doc. 155]. Plaintiffs only served one timely prelitigation notice on the Columbia County Defendants – the July 10 Notice Letter. [Doc. 155-3]. This notice letter does not state any action of the Columbia County Defendants that violated the NVRA, nor does it state any action of these Defendants which aggrieved the Plaintiffs. Plaintiffs therefore failed to give the necessary pre-litigation notice which is a requirement of them maintaining this private right of action as to these Defendants. *Kemp*, 841 F. Supp. 2d 1320, 1335.[3]

"The apparent purpose of the notice provision is to allow those violating the

[3] Other Plaintiffs sent a different NVRA Notice Letter on July 8, 2024 to various other Defendants, but the Columbia County Defendants did not receive this letter. [Doc. 155-10]. Plaintiffs also sent an Amended Notice Letter to the Columbia County Defendants on January 9, 2025, but it is ineffectual because it was filed almost one month after Plaintiffs filed the Amended Complaint. *See Kemp*, 841 F. Supp. 2d at 1335 ("The plain language of [52 U.S.C. § 20510] makes clear that pre-litigation notice is required. It confers standing on a party aggrieved only 'if the violation is not corrected within 90 days after receipt of a notice under paragraph (1).' No standing is therefore conferred if no proper notice is given, since the 90-day period never runs.") (citations omitted).

NVRA the opportunity to attempt compliance with its mandates before facing litigation." *Kemp*, 841 F. Supp. 2d at 1335 (2012) (citing *Ass'n of Cmty. Orgs. For Reform Now v. Miller*, 129 F.3d 833, 838 (6th Cir. 1997)). The July 10 Notice Letter does not reference any alleged violation by the Columbia County Defendants of which the Plaintiffs are aggrieved, or indeed of any county board or public official. [Doc. 155-3 *passim*]. These Plaintiffs therefore lack standing to bring an action against the Columbia County Defendants and the Amended Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1).

Plaintiffs' failure to specify any actual alleged violation by the Columbia County Defendants in the July 10 Notice Letter is also fatal because Plaintiffs rely on this notice exclusively to provide the basis of their claims against the seemingly random band of counties pulled into this litigation. See [Doc. 155 ¶ 106] ("A copy of the notice letter advising the Seventeen County Board Member Defendants of the NVRA violations described herein is attached as Exhibit 2 [Doc. 155-3].") (citation and emphasis added). The Amended Complaint thus also fails to state a claim upon which relief can be granted – or indeed to state a claim against these Defendants at all – and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

IV. Plaintiffs NAACP and GCPA do not have a private right of action against the Columbia County Defendants under the NVRA.

"[P]rivate rights of action to enforce federal law must be created by Congress." *Alexander v. Sandoval*, 532 U.S. 275, 286, 121 S. Ct. 1151, 149 L. Ed. 2d 517 (2001).

"The starting point of statutory construction is to begin 'with the words of the statutory provision.'" *Huff v. Dekalb County*, 516 F.3d 1273, 1280 (11th Cir. 2008) (quoting *Harris v. Garner*, 216 F.3d 970, 972 (11th Cir. 2000) (en banc)). When the language of a statute is clear, the Court's inquiry "ends there as well." *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438, 142 L. Ed. 2d 881, 119 S. Ct. 755 (1999).

The NVRA gives the Attorney General of the United States wide authority to bring any action "as is necessary to carry out this Act" without limitation to the potential defendants or parties needing notice of the alleged violations. 52 U.S.C. § 20510(a). The NVRA does not mirror this language when granting private rights of action, however. Compare 52 U.S.C. § 20510(b). In order to bring a private right of action under the NVRA here, the aggrieved party first must "provide written notice of the violation to the chief election official of the State involved." 52 U.S.C. § 20510(b)(1). This notice provision is designed to allow the putative defendant the statutory right to correct the identified violation after being given notice of it before facing the expenses of a lawsuit. See *Kemp*, 841 F. Supp. 2d at 1335. If the identified violation is not corrected within the statutorily-required period of time, "the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation" identified in the notice. 52 U.S.C. § 20510(b)(2).

While the NVRA sets forth a statutory procedure for giving notice and bringing a private cause of action against the chief election official of the State involved, it does not expressly provide such a procedure or right against counties or other public officials. Rather, the statute directs a plaintiff to give notice to the chief election official of the State and then to seek redress of "the violation" which it asked the chief election official to remedy. Plaintiffs' Amended Complaint therefore should be dismissed against the Columbia County Defendants because the NVRA did not give them standing to bring a suit directly against a county board or its public officials, as opposed to the Georgia Secretary of State.

This conclusion is fully supported by the history and statutory framework of the NVRA. The NVRA expressly mandates that "[e]ach state shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this Act." 52 U.S.C. § 20509 (emphasis added). In turn, Georgia provided that "[t]he Secretary of State is designated as the chief state election official to coordinate the responsibilities of this state under the National Voter Registration Act of 1993 (P.L. 103-21) as required by 52 U.S.C. Section 20509." O.C.G.A. § 21-2-210 (emphasis added). It is thus clear from the express text of the NVRA that Congress intended a single, designated state official "to be responsible for coordination of State responsibilities under the [NVRA]," 52 U.S.C. § 20509, and that Georgia has complied with this requirement.

As the Sixth Circuit held, when rejecting a claim that the Ohio Secretary of State was merely a "coordinator" and not a proper party to a private NVRA claim:

> Under the plain language of the statute, the designated officer, here the Secretary, must coordinate state responsibilities . . . . The Secretary's focus on the word "coordination" in isolation ignores the phrase it modifies, which is "state responsibilities" – namely, that "[e]ach State shall designate a State officer or employee" who is "to be responsible for coordination of State responsibilities" . . . .
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> [T]he entire Act, including other subsections, speaks in terms of state responsibilities; what is noticeably missing is any mention of county, municipal, or other local authorities. Indeed, Congress grafted the NVRA onto the existing public assistance structure, under which the fifty states, not their political subdivisions, have the ultimate accountability. Accordingly, the better interpretation of the statute reads these two provisions together – that each State shall designate voter registration agencies, and that each state shall ensure that the agencies complete the required tasks.

Harkless v. Brunner, 545 F.3d 445, 452 (6th Cir. 2008) (emphasis added). Thus, the proper party for a private right of action under the NVRA is the Georgia Secretary of State because "[r]equiring would-be plaintiffs to send notice to their chief election official about ongoing NVRA violations would hardly make sense if that official did not have the authority to remedy NVRA violations." *Id.* at 453; see also *Scott v. Schedler*, 771 F.3d. 831, 839 (5th Cir. 2014) (quoting same).[4]

[4] The plaintiffs in *Harkless* alleged that various entities failed to comply with the "Motor Voter" provision of the NVRA, 52 U.S.C. § 20506, including the head of a state agency ("DJFS"). DJFS moved to dismiss the complaint against it, arguing that it had no legal duties under the NVRA. *Harkless*, 545 F.3d at 449. The Court found that the DJFS fell within the express definition of a party having obligations under that provision, and upheld the denial of DJFS's motion to dismiss. *Id.* at 455-56.

Indeed, Plaintiffs themselves recognize that the remedy provided by the express provisions of the NVRA is sufficient to give them relief in this case, when they admitted in their July 10 Notice Letter to Secretary Raffensperger that "[a]s Secretary of State of Georgia, you are the State's Chief Elections Officer, O.C.G.A. §§ 21-2-50, 21-2-50.2, and, as such, are responsible for ensuring Georgia's compliance with the NVRA. See 52 U.S.C. § 20509." [Doc. 155-3 p. 8] (emphasis added). Plaintiffs restate this in their Amended Complaint as well. [Doc. 155 ¶ 78].[5] And that action against the chief election official is the only express private right of action provided by Congress in the NVRA. There is no need to imply further remedies into a statute which has stated an express procedure to obtain relief and has identified the person "responsible for coordination of State responsibilities" under the NVRA. If Plaintiffs are unsatisfied with the scope of private remedy granted under the NVRA, their

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DJFS did not appear to raise the defense presented here – that a statutory private right of action does not exist against such a defendant in the first place – and thus this portion of *Harkless* is distinguishable. See also, *Voter Integrity Project NC, Inc. v. Wake Cnty. Bd. of Elections*, 301 F. Supp. 3d 612 (E.D. N.C. 2017) (local government's motion to dismiss NVRA complaint because "the mandates of the NVRA are directed to states" was denied, without analyzing the scope of the private right of action provision).

[5] "Secretary Raffensperger is the designated chief election official responsible for the coordination of Georgia's list maintenance and other responsibilities under the NVRA . . . . Secretary Raffensperger is responsible for enforcing election statutes and routinely provides training and issues guidance to county boards of registrars and election of all 159 Georgia counties on various election procedures . . . ." (cit. omitted).

redress is with Congress. See *Hippocratic Med.*, 602 U.S. at 380 ("'Our system of government leaves many crucial decisions to the political processes,' where democratic debate can occur and a wide variety of interests and views can be weighed.") (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 227, 94 S. Ct. 2925, 41 L. Ed. 2d 706 (1974)).

Nor would it be proper to imply such a private right of action against counties or local public officials into the text of the NVRA. Congress knows how to grant express private rights of action against "all" alleged violators, or specific classes of defendants, when it chooses to do so. See, e.g. 16 U.S.C. § 1540(g) (authorizing "any person" to bring an injunctive relief action against "any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution)" for violations of the Endangered Species Act); 29 U.S.C. § 1854(a) (authorizing private actions against a "farm labor contractor, agricultural employer, agricultural association, or other person" that violates the Migrant and Seasonal Agricultural Worker Protection Act); 33 U.S.C. § 1365(a), (b) (Clean Water Act provision authorizing citizen suits by "any citizen . . . against any person . . . who is alleged to be in violation of" certain requirements after proper notice to the violator); 42 U.S.C. § 6972(a) (authorizing private suits "against any person (including (a) the United States, and (b) any other government instrumentality or agency, to the extent permitted by the eleventh amendment to the

Constitution)" under the Resource Conservation and Recovery Act); 42 U.S.C. § 7604(a), (b) (Clean Air Act provision authorizing citizen suits "against any person" who is alleged to have violated "an emission standard or limitation under this Act" after giving required notice to that person, as well as "against any person" who constructs certain facilities without a permit). Congress likewise knows how to give a private right of action against "[e]very person" who violates the Constitution or its laws if done under color of any statute, ordinance, regulation, custom, or usage of a State. 42 U.S.C. § 1983. Importantly, Congress showed that it knew how to grant broad rights of action in the very Act at issue in this case, expressly authorizing the United States Attorney General to seek "such declaratory or injunctive relief as is necessary to carry out [the NVRA]." 52 U.S.C. § 20510(a).

Here by contrast, Congress did not expressly give a private right of action against "any person" or "every person" who allegedly violated the NVRA as it has in other legislation. Nor did Congress expressly give a private right of action to bring actions "as is necessary to carry out [the NVRA]" as it did for the Attorney General. Simply stated, if Congress wanted to give "any citizen" the right to sue "any" or "every" alleged violator as it did in other Acts, or to grant a private right to bring actions "as is necessary to carry out this Act," it would have used that same language in the NVRA. It did not. "We have stated time and time against that courts must presume that a legislature says in a statute what it means and means in a statute what

it says." *Germain*, 503 U.S. at 254. Especially here, where Congress showed in the NVRA that it could refer to other governmental entities besides the chief election official where it chose to do so. See, e.g. 52 U.S.C. § 20506(a)(3)(B)(i) (referencing "local government offices . . . and county clerks" in the "Motor Voter" portion of the NVRA).

"It is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it . . . . This principle of statutory construction reflects an ancient maxim – expressio unius est exclusio alterius . . . ." *Shotz*, 344 F.3d at 1171 n.15 (citations omitted). Here, the fact that Congress expressly provided a more limited private right of action than the public right of action granted to the Attorney General indicates a clear intent to limit the private grant to something less. Given that Congress (1) expressly required each state to designate a chief election official to be responsible for NVRA compliance; (2) expressly singled out that particular designated official in the private right of action; and (3) excluded mention of any other government actor despite doing so in other provisions of the NVRA, it is clear that Congress chose to limit private rights of action to ones brought against the chief election official of the state. The expression of one thing is the exclusion of the other – "*expressio unius est exclusio alterius*." See *id.*

This is not to say that a party allegedly injured by Senate Bill 189 is without remedy. In addition to the private right of action Plaintiffs have against the chief election officer under the NVRA, two of the state law provisions complained of by Plaintiffs here have an express right of appeal to a Georgia Superior Court if a party believes that it is aggrieved by the actions challenged in the Amended Complaint. See O.C.G.A. §§ 21-2-229(e) ("[e]ither party shall have a right of appeal from the decision of the registrars to the superior court by filing a petition"), 21-2-230(g) ("the challenged elector may appeal the decision of the registrars in the same manner as provided in subsection (e) of Code Section 21-2-229"), 21-2-230(i) (same). And allowing the actually injured party to bring an action based upon actual facts, as opposed to the hypothetical and speculative representative claims made by Plaintiffs here, further fulfils the principles behind the standing requirement. See *Hippocratic Med.*, 602 U.S. at 379-80 ("the standing doctrine serves to protect the 'autonomy' of those who are most directly affected so that they can decide whether and how to challenge the defendant's action") (quoting *Valley Forge Christian College v. Americans United for Separation of Church & State*, 454 U.S. 464, 473, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982)).

Plaintiffs' Amended Complaint therefore fails to state a claim upon which relief can be granted because Congress did not grant Plaintiffs a private right of action directly against counties and local public officials. The Amended Complaint thus

should be dismissed as to the Columbia County Defendants pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

CONCLUSION

For the foregoing reasons, and the reasons stated in the briefs of others incorporated herein by reference, this Motion to Dismiss filed by the Columbia County Defendants should be granted pursuant to both Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted this 21st day of March, 2025.

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1 AND CERTIFICATE OF SERVICE

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

I further certify that I have this day electronically filed this Motion to Dismiss and Brief in Support of Defendant Columbia County Board of Elections and Registration; Ann Cushman, Wanda Duffie, and Larry Wiggins to Plaintiffs' Consolidated First Amended Complaint with the Clerk of Court using the CM/ECF system which will automatically send email notification to all attorneys of record.

Respectfully submitted this 21st day of March, 2025.

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