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

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WORTH COUNTY DEFENDANTS' MOTION TO DISMISS AND BRIEF IN SUPPORT

The Worth County Board of Elections and Registration (the "Worth County BOER"), and Forestine Morris, Drew Chestnutt, Felicia Crapp, Melvin Harris, and Jill Ivey in their official capacities as member of the Worth County Board of Elections and Registration (collectively, the "Worth County Defendants") move to dismiss Plaintiffs' Consolidated First Amended Complaint [Doc. 155] pursuant to Fed. R. Civ. P. 12(b)(1) for lack of standing and 12(b)(6) for failure to state a claim.

Worth County is mentioned exactly four times in the Complaint—in the caption, in footnote 4 on page 10 as part of a list of counties who were sent notice of alleged violations of the National Voter Registration Act ("NVRA"),

in paragraph 105 on page 48 that simply describes the Worth County BOER and lists its members, and in footnote 41 on page 94 that again lists the counties that were sent a notice letter. Nowhere in the Complaint does any plaintiff make any factual allegation regarding any past or imminent future conduct of the Worth County Defendants. As such, they fail to state a claim upon which relief can be granted and the Complaint should be dismissed as to the Worth County Defendants. Furthermore, Plaintiffs Georgia Conference of the NAACP and the Georgia Coalition for the People's Agenda ("Plaintiffs"), the only plaintiffs who assert claims against the Worth County Defendants, lack standing.

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I. Plaintiffs Lack Standing

The standing doctrine requires a plaintiff to show that it: (1) suffered an injury-in-fact (2) that is fairly traceable to the challenged conduct of the defendant and (3) that is likely to be redressed by a favorable judicial decision. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560-61. "These three elements 'are not mere pleading requirements but rather an indispensable part of the plaintiff's case.'" *Ga. Ass'n of Latino Elected Offs., Inc. ("GALEO") v. Gwinnett Cnty. Bd. of Registration & Elections*, 36 F.4th 1100, 1113 (11th Cir. 2022) (quoting Lujan, 504 U.S. at 561).

In this case, Plaintiffs do not and cannot allege an actual injury in fact. To establish an injury sufficient to establish standing, an injury must be

"concrete, particularized, and actual or imminent." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). The threatened injury must be "certainly impending," and allegations of "possible future injury" are not sufficient. *Id.*

Plaintiffs do not allege in this case that the Worth County Defendants have wrongfully removed any voters from the voter rolls in contravention of the NVRA. They do not even allege that any voters have been challenged in Worth County. Plaintiffs simply presume the possibility of these events occurring in the future, which is not a sufficiently imminent action to allow standing. In a recent case in this District, local election officials challenged a Georgia law that allows the State Election Board to suspend local election officials in certain situations following an investigatory and hearing process. Plaintiffs in that case claimed they were injured because a possibility existed "that at some unknown point in the future, a local election superintendent or board of registrars will be suspended." *Coalition for Good Governance v. Kemp*, 2025 WL 848462, *6 (N.D. Ga. March 18, 2025). In that case, the Court held that the numerous and hypothetical events that must occur before any plaintiff was actually injured meant was "precisely the kind of speculative harm that is insufficient to confer standing." *Id.* This case is similar. The potential challenges complained of are purely hypothetical when it comes to Worth County. The way in which the Worth County Defendants

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would handle any such hypothetical challenge is purely conjecture. Thus, Plaintiffs lack any actual or imminent injury.

It is insufficient to allege challenges in other counties and presume that creates standing as to Worth County. Standing is not "dispensed in gross." *Murthy v. Missouri*, 603 U.S. 43, 61 (2024). Defendants may not be treated "as a monolith." 603 U.S. at 69. A plaintiff must demonstrate standing for each claim "against each defendant." *Id.* at 61. This requires a showing that "a particular defendant" engaged in challenged conduct. *Id.*

In further support of its arguments that Plaintiffs lack standing, the Worth County Defendants adopt the arguments regarding the speculative nature of Plaintiffs' claimed injuries set forth in Section II.A of the State's Brief in Support of Motion to Dismiss [Doc. 168-1 at 24]. The Worth County Defendants further adopt the State's arguments asserting Plaintiffs' lack of organizational and associational standing in Sections II.B.1 and II.B.2 of their brief [Doc. 168-1 at 25-50].

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II. Plaintiffs Fail to State a Claim Upon Which Relief Can be Granted Against the Worth County Defendants

> [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 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)) (emphasis added). In this case, there are no factual allegations against the Worth County Defendants at all. There are no accusations of past misconduct by the Worth County Defendants. There are no accusations of imminent future misconduct by the Worth County Defendants. The Complaint does not contain the "sufficient factual matter" to meet the plausibility standards of *Twombly* and *Iqbal*, and thus fails to state a claim upon which relief may be granted as to the Worth County Defendants.

Plaintiffs further fail to state a claim against the Worth County Defendants because they did not properly follow the required pre-suit notice requirement and because the private right of action under the NVRA does not extend to counties.

The pre-suit notice sent on July 10, 2024 is the only notice sent to Worth County Defendants, and there is no mention of Worth County in that notice. The notice simply alleges that "Georgia" is not in compliance with the NVRA. The purpose of the pre-suit notice requirement in the NVRA is to give the person being noticed "the opportunity to attempt compliance with its mandates before facing litigation." *Ga. State Conf. of the NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1335 (N.D. Ga. 2012) (citing *Ass'n of Cmty Orgs for Reform Now v. Miller*, 129 F.3d 833, 838 (6th Cir. 1997)). But the July 10

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notice does not inform Worth County of any conduct it has done or that it is considering doing that would violate the NVRA. As such it is not sufficient notice. The NVRA makes clear that adequate pre-litigation notice is required, and no standing is conferred if proper pre-litigation notice is not given. *Id.*

While there have been examples of NVRA cases against local jurisdictions, it is not actually clear that the private right of action in the NVRA should extend to actions against local governments, and Worth County Defendants are not aware of any cases that analyze whether the NVRA's private right of action should be extended to actions against local governments. Private rights of action should be construed narrowly. *See Bellitto v. Snipes*, 935 F.3d 1192, 1202–03 (11th Cir. 2019) ("Where Congress has not created a private right of action, courts may not do so, "no matter how desirable that might be as a policy matter, or how compatible with the statute.") (internal citations omitted).

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While granting broad enforcement authority to the Attorney General, the NVRA's private right of action is limited. It states in relevant portion:

> (1) A person who is aggrieved by a violation of this chapter may provide written notice of the violation to the chief election official of the State involved.
>
> (2) If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person

> may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.
>
> (3) If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official of the State under paragraph (1) before bringing a civil action under paragraph (2).

52 U.S.C.A. § 20510(b). Because the notice is required to be sent to the chief election official of the State, which is the Secretary of State in Georgia, it follows that the private right of action envisioned by the NVRA is one against the Secretary of State. Otherwise, the statutory scheme would be that notice is required to be sent to the Secretary of State and that notice allows potential plaintiffs to then sue anybody, which completely negates the notice requirement.

For all of these reasons, Plaintiffs' claims against the Worth County Defendants should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) for lack of standing and 12(b)(6) failure to state a claim.

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Respectfully submitted this 24th day of March, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned certifies that the foregoing Brief has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ C. Ryan Germany
C. Ryan Germany

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CERTIFICATE OF SERVICE

In accordance with Local Rule 5.1, I hereby certify that on this day I electronically filed the above **WORTH COUNTY DEFENDANTS MOTION TO DISMISS AND BRIEF IN SUPPORT** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notifications of such filing to all attorneys of record.

Dated: March 24, 2025

/s/ C. Ryan Germany
C. Ryan Germany

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