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

| | | |
|---|---|---|
| NEW GEORGIA PROJECT, et al.<br><br>Plaintiffs,<br><br>v.<br><br>BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, et al.<br><br>Defendants. | ) | CIVIL ACTION FILE NO.:<br><br>1:24-CV-03412-SDG<br><br>(Consolidated with 1:24-CV-04287-SDG and 1:24-CV-04659-SDG) |



**MEMORANDUM OF LAW IN SUPPORT OF DEKALB DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED AND CONSOLIDATED COMPLAINT**

**NOW COME** the DEKALB COUNTY BOARD OF REGISTRATION AND ELECTIONS (the "**BRE**"); VASU ABHIRAMAN, in his official capacity as a member of the BRE ("**Abhiraman**"); NANCY JESTER, in her official capacity as a member of the BRE ("**Jester**"); ANTHONY LEWIS, in his official capacity as a member of the BRE ("**Lewis**"); SUSAN MOTTER, in her official capacity as a member of the BRE ("**Motter**"); and KARLI SWIFT, in her official capacity as a member of the BRE ("**Swift**," together with BRE, Abhiraman, Jester, Lewis, and Motter, the "**DeKalb Defendants**") and file this memorandum of law in support of their Motion to Dismiss Plaintiffs' Amended and Consolidated Complaint showing this honorable court the following:

## INTRODUCTION

The original complaint filed by the Georgia State Conference of the NAACP (the "**GANAACP**") and the Georgia Coalition for the People's Agenda ("**GCPA**," together with GANAACP the "**Plaintiffs**") only named Secretary of State Brad Raffensberger as a defendant. *See* Doc. 1 in 1:24-CV-04287 (the "**Original Case**"). After this Court entered an order consolidating the Original Case with two other cases (*i.e.*, 1:24-CV-03412 and 1:24-CV-04659) (*see* Doc. 137 in the 3412 action), the plaintiffs in all the civil actions filed a consolidated amended complaint. See Doc. 155 (the "**Amended Complaint**"). In the Amended Complaint, the Plaintiffs added the DeKalb Defendants as defendants[1] and asserted purported violations of the National Voter Registration Act, 52 U.S.C. § 20501 *et seq.* ("NVRA") by the DeKalb Defendants in Counts I, II, and IV of the Amended Complaint.



Plaintiffs' claims against the DeKalb Defendants fail for several reasons. First, Plaintiffs fail to establish standing to bring claims against the DeKalb

[1] In addition to adding the DeKalb Defendants, an additional sixteen other county election boards and their members were added as defendants. Adding a defendant by amendment under Rule 15 of the Federal Rules of Civil Procedure without leave of court as required under Rule 21 of the Federal Rules of Civil Procedure is proper in the Eleventh Circuit. *See McLellan v. Mississippi Power & Light Co.*, 526 F.2d 870, 872-73 (5th Cir. 1976), *vacated in part on other grounds,* 545 F.2d 919 (5th Cir. 1977). All decisions of the Fifth Circuit issued prior to October 1, 1981, are binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1207 (11th Cir. 1981).

Defendants. Second, Plaintiffs have failed to allege any specific facts establishing the DeKalb Defendants violated the NVRA. Third, even if the DeKalb Defendants may have violated the NVRA, Plaintiffs have failed to notify the DeKalb Defendants of any alleged acts by the DeKalb Defendants that violate the NVRA. Finally, the Amended Complaint is subject to dismissal without prejudice as a "shotgun pleading" under binding precedent of the Eleventh Circuit. In an effort to streamline this memorandum and to avoid duplicate arguments, the DeKalb Defendants will adopt and incorporate the responses of several other defendants in these actions to assist the court.



## ARGUMENTS AND CITATIONS OF AUTHORITY

### I. Standard for Motion to Dismiss.

Under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), dismissal of a claim is appropriate if the complaint fails to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), *quoting Twombly*, 550 U.S. at 570. "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 662.

## II. Plaintiffs have failed to establish standing to bring claims against the DeKalb Defendants.

The Plaintiffs have failed to show any concrete or particularized injury that is traceable to the DeKalb Defendants. The State defendants in their brief have set forth the applicable legal arguments in this regard. *See* Doc. 168-1 at 11-43. To not duplicate work for the Court, the DeKalb Defendants incorporate the arguments the State of Georgia put forward regarding the standing issue as set forth in Sections II(A) and II(B) of their Brief. Doc. 168-1 at 11-40.

## III. Plaintiffs have failed to allege any facts regarding the DeKalb Defendants.

The Plaintiffs have failed to make any specific allegations in the Amended Complaint that the DeKalb Defendants have engaged in any act in violation of the NVRA. In fact, the word DeKalb only appears seven times throughout the entirety of the 142 page Amended Complaint.[2] It appears twice in the case caption, once in footnote 4 and once in footnote 41 regarding the letter sent by the Plaintiffs to the DeKalb Defendants, and three times in Paragraph 93 of the Amended Complaint. There are no other allegations, much less any specific allegations regarding the DeKalb Defendants in the



[2] The term "DeKalb" appears a total of eleven times throughout the Amended Complaint if you include its attachments. In addition to the seven times identified in this paragraph, "DeKalb" also appears three times in Appendix A to the Amended Complaint [Doc. 155-1] and once in Exhibit 2 to the Amended Complaint [Doc. 155-3].

Amended Complaint. In short, Plaintiffs have not alleged that the DeKalb Defendants have engaged in any specific conduct that is actionable.

## IV. Plaintiffs have failed to provide notice of any NVRA violations by the DeKalb Defendants prior to the filing of the Amended Complaint.

While Plaintiffs may have a private right of action under the NVRA[3], Plaintiffs are required to provide pre-lawsuit notice to allow potential defendants "the opportunity to attempt compliance with [the NVRA's] mandates before facing litigation." *Georgia State Conf. of N.A.A.C.P. v. Kemp*, 841 F. Supp. 2d 1320, 1335 (N.D. Ga. 2012). Nowhere in the July 10, 2024, notice that was sent to the DeKalb Defendants is there any allegation that the DeKalb Defendants are violating the NVRA. *See* Doc. 155-3 (Exhibit 2 to the Amended Complaint). The only alleged violations as asserted by Plaintiffs in the notice letter are made against the State and not the DeKalb Defendants. Because Plaintiffs have failed to provide notice to the DeKalb Defendants, Plaintiffs' NVRA claims against the DeKalb Defendants should be dismissed.



## V. The Amended Complaint is a "shotgun" pleading.

"Shotgun" pleadings are not allowed in the Eleventh Circuit. *See Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 979 (11th Cir. 2008) ("shotgun"

[3] The DeKalb Defendants do not concede that Plaintiffs have a private right of action against local (as opposed to state) governments. The DeKalb Defendants adopt and incorporate by this reference the arguments advanced by the Worth County Defendants on this issue. *See* Doc. 255 at 6-7.

pleadings have "been roundly, repeatedly, and consistently condemn[ed] for years" in this Circuit) (*abrogated on other grounds by Twombly*, 550 U.S. 544 (2007)). A shotgun pleading "violates either Federal Rule of Civil Procedure 8(a)(2) or Rule 10(b), or both. [*cit.*]. Rule 8(a)(2) requires the complaint to provide 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Barmapov v. Amuial*, 986 F.3d 1321, 1324 (11th Cir. 2021) (citations omitted). The Eleventh Circuit has identified four types of shotgun pleadings. *Id.* The Amended Complaint is what the Eleventh Circuit has called "[t]he most common type [of a gunshot pleading]—by a long shot." *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1321 (11th Cir. 2015). This first type of gunshot pleading has been defined as "a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint." *Id.* When faced with a shotgun pleading, the District Court has "some responsibility in ensuring that shotgun pleadings are nipped in the bud." *Barmapov*, 986 F.3d at 1328 (J. Tjoflat, concurring). Finally, defense counsel when faced with a shotgun pleading, has a responsibility to either file a motion for a more definitive statement or a motion to dismiss under Rule 12(b)(6). *Id.* at 1329.

Plaintiffs' Amended Compliant is a quintessential shotgun pleading as defined by the Eleventh Circuit. The first paragraph of Count II "re-allege[s]

and incorporate[s] all relevant allegations contained in the paragraphs above." Doc. 155 at ¶ 261. This same allegation is the leading paragraph for each of the counts of the Amended Complaint, *i.e.*, Counts III (¶ 271), IV (¶ 276), V (¶ 280), VI (¶ 288), VII (¶ 298), VIII (¶ 311), IX (¶ 321), X (¶ 333), XI (¶ 350), and XII (¶ 360). These paragraphs reallege and incorporate all that came before them. The mere use of the limiting words "relevant allegations" is no limitation at all. Neither the DeKalb Defendants nor their undersigned counsel know which factual allegations apply to Count II and Count IV or which of the allegations the Plaintiffs deem "relevant" to enable counsel to intelligently respond to the Amended Complaint. *See Jackson v. Bank of America, N.A.*, 898 F.3d 1348, 1356.



The Eleventh Circuit has made clear what District Courts should do when faced with a shotgun pleading.

> When a plaintiff files a shotgun pleading, he fails to satisfy the[] basic [Rule 8(a)(d) pleading] requirements. Such a pleading is never plain because it is impossible to comprehend which specific factual allegations the plaintiff intends to support which of his causes of action, or how they do so. It is not the proper function of courts in this Circuit to parse out such incomprehensible allegations, which is why we have stated that a district court that receives a shotgun pleading should strike it and instruct counsel to replead the case—even if the other party does not move the court to strike the pleading.

*Est. of Bass v. Regions Bank, Inc.*, 947 F.3d 1352, 1358 (11th Cir. 2020) (citations omitted). Because the Amended Complaint is a shotgun pleading under binding Eleventh Circuit precedent, this Court should dismiss the Amended Complaint.

## CONCLUSION

For the foregoing reasons, Plaintiffs' Amended Complaint against the DeKalb Defendants should be dismissed.

## CERTIFICATE OF COMPLIANCE

In accordance with Civil Local Rule 7.1(D), I hereby certify that the foregoing has been prepared using 13 point Century Schoolbook font as approved by the Court in Civil Local Rule 5.1(C).

Respectfully submitted, this 24th day of March, 2025



**Small Herrin, LLP**
Counsel for the DeKalb Defendants

By: /s/ *Brent W. Herrin*
Brent W. Herrin
Georgia Bar No. 614753
Benjamin S. Klehr
Georgia Bar No. 487931
Q. Andy T. Nguyen
Georgia Bar No. 729256

100 Galleria Parkway, Suite 350
Atlanta, Georgia 30339
Telephone: 770-783-1800; Fax: 770-857-1665
Email: bherrin@smallherrin.com
Email: bklehr@smallherrin.com
Email: anguyen@smallherrin.com