

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

WILLIAM HENDERSON, DEKALB
COUNTY REPUBLICAN PARTY, INC.,

Plaintiffs,

v.

VASU ABHIRAMAN, in his official capacity;
NANCY JESTER, in her official capacity;
ANTHONY LEWIS, in his official capacity;
SUSAN MOTTER, in her official capacity;
KARLI SWIFT, in her official capacity,

Defendants.

Civil Action File No. 2024CV8564

**PROPOSED INTERVENOR VET VOICE FOUNDATION'S OPPOSITION TO
PLAINTIFFS' PETITION FOR WRIT OF MANDAMUS**

Proposed Intervenor Vet Voice Foundation respectfully submits this proposed opposition to Plaintiffs' application for writ of mandamus ("Petition"). For the reasons set forth below, the Court should deny the Petition and dismiss the lawsuit.

INTRODUCTION

In late August 2024—just weeks before DeKalb County finalized its voter lists for the 2024 general election—Plaintiff William Henderson brought mass challenges to the eligibility of more than 5,000 DeKalb County voters. Given the significant risk that systematic challenges like Henderson's could erroneously disenfranchise eligible voters in violation of the National Voter Registration Act of 1933 ("NVRA"), the County Defendants, in consultation with the County Attorney, properly determined that the best way to handle mass challenges like Henderson's was to postpone full consideration of them until after certification of the November 2024 election.

This Court should deny Plaintiffs' eleventh-hour request to force the Board to take a different course. To start, Plaintiffs have no clear legal right to mandamus relief. They ask the

Court to force the Board to process Henderson's challenges, but the Board already did that. The Board considered Henderson's challenges at its September 12th meeting; discussed the proper approach to systematic challenges like Henderson's; and decided to delay adjudicating such challenges until after the election. Although Plaintiffs disagree with the Board's decision, Henderson does not have a legal right to force the Board to take different action. The Board has already met its statutory obligation under O.C.G.A. § 21-2-230 to "consider" Henderson's challenges, and it goes without saying that the Board's decision to comply with federal and state law by delaying any additional action of Henderson's challenges was not an abuse of discretion.

To the extent that Plaintiffs are actually trying to force the Board to find probable cause on Henderson's challenges and remove voters from the County registration rolls on the eve of the election, they are not entitled to that relief either. At this point in the election cycle, with only 32 days until the November election, both the NVRA and Georgia law prohibit the Board from removing any voters from the rolls pursuant to Henderson's challenges. Further, there is no basis on which the Board could find probable cause on Henderson's challenges, even if the Board was forced to further consider them.

Finally, this Court should deny mandamus relief because this suit is barred by the equitable doctrine of laches. Henderson delayed bringing his challenges and Plaintiffs delayed filing this lawsuit and pressing their claims, some of which seek to force the County to process challenges based on errors that Plaintiffs allege occurred *five years ago*. Granting relief to Plaintiffs would significantly prejudice thousands of voters, including Vet Voice's constituents, who would be forced to defend their eligibility to vote in a very short window of time before the election, leaving them limited time to cure any erroneous removals.

BACKGROUND

I. Statutory Background

The NVRA requires states to provide simplified, voter-friendly systems for registering to vote. It establishes procedures designed to “increase the number of eligible citizens who register to vote” and also seeks to make it “possible for Federal, State, and local governments to implement [the NVRA] in a manner that enhances the participation of eligible citizens as voters.” 52 U.S.C. §§ 20501(b)(1)–(2). Congress enacted these measures in part because it found that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation . . . and disproportionately harm voter participation by various groups, including racial minorities.” *Id.* § 20501(a)(3).

To further Congress’s pro-voter objectives, the NVRA imposes limitations on whether, when, and how a state may remove a voter from its registration rolls. *See* 52 U.S.C. §§ 20507(a)(3)–(4), (b)–(d). Immediate removal is permitted only in limited circumstances, such as when a voter requests to be deregistered or is convicted of a disenfranchising felony. *See id.* §§ 20507(a)(3)(A)–(B). Otherwise, a state may not remove voters from the rolls without first complying with prescribed procedural safeguards that Congress imposed to minimize risks of erroneous cancellation. *See id.* §§ 20507(a)(3)(C), (c), (d). For instance, a registrant may be removed from the rolls because of a change in residence, in most cases, *only after* failing to respond to a notice *and* failing to appear to vote for two general elections after receipt of that notice. *Id.* § 20507(d)(1).

The NVRA also prohibits systematic voter purges within 90 days of any federal election. *Id.* § 20507(c)(2)(A). The 90-day quiet period “requires states to ‘complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible

voters.’” *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1338–39 (11th Cir. 2014) (citing the NVRA). Courts have found that Congress’ use of “the phrase ‘any program’ suggests that the 90 Day Provision has a broad meaning.” *Id.* at 1344. The distinction between individualized and systematic removals exists because

individualized removals are safe to conduct at any time because this type of removal is usually based on individual correspondence or rigorous individualized inquiry, leading to a smaller chance for mistakes. For programs that systematically remove voters, however, Congress decided to be more cautious.

Id. at 1346.

Just as federal law proscribes when and how states may remove voters from voting rolls, Georgia law also proscribes when and how electors may challenge a voter’s registration or ability to participate in an election. *See* O.C.G.A. § 21-2-228 *et seq.* Under Section 230, any elector of a county may challenge the right of any elector in that same county to vote in an election, but challenges made within 45 days of an election are not processed until after the election. *See id.* § 21-2-230(b)(1). And although Plaintiffs contend that Section 230 challenges only challenge an elector’s ability to vote in a certain election rather than to remain on the rolls as a registered voter, Pet. ¶ 22, Section 230 itself says otherwise. Specifically, under Section 230(h), if a voter is successfully challenged, “the challenged elector shall not be permitted to vote and, if the challenge is based upon the grounds that the elector is not qualified to remain on the list of electors, the challenged elector’s name *shall be removed from the list of electors.*” *Id.* § 21-2-230(h) (emphasis added).

II. Plaintiff Henderson’s Challenges

In the window of just nine days—between August 19 and August 28—less than three months before the November general election, Henderson filed multiple mass voter challenges under O.C.G.A. § 21-2-230, cumulatively challenging over 5,000 voters’ ability to participate in

the 2024 general election.¹ These thousands of voters were lumped into three categories of challenges: (1) voters whose registration allegedly lists a residential address that links to U.S. Post Offices, UPS Stores, or other mail center businesses, whom Henderson identified by making a “hash string of those [mailing center] addresses and match[ing] it to the DeKalb voter roll”;² (2) voters who allegedly filed a permanent address change with the National Change of Address (“NCOA”) system and registered to vote in a new state, whom Henderson identified by comparing NCOA lists with the State of Florida’s voter registration lists; and (3) voters whom Henderson contends “should have been removed from the county’s voter roll in 2023” “as part of the mandated list maintenance procedures,” and whom Henderson identified by using what he called an “EXACT Match” formula. Pet., Ex. B at 1–2.

III. The Board’s Resolution

On September 12, 2024, after receiving Henderson’s challenges, the DeKalb County Board met and—following presentation and analysis by the County Attorney and the supervising attorney in charge of elections—passed a Resolution “Relating to the Scheduling of Voter Challenges Received Less than Ninety Days Prior to the Date of a Primary or General Election.”³ The Resolution conforms O.C.G.A. § 21-2-230 to the requirements of the NVRA by specifying certain

¹ Marci McCarthy, Chair of Plaintiff DeKalb County Republican Party, testified at the State Election Board meeting on September 23, 2024, that Henderson challenged “more than 5,000 voters.” Georgia State Election Bd., *Georgia State Election Board Meeting: Sept. 23, 2024* at 5:24:45–53, YouTube (Sept. 23, 2024), https://www.youtube.com/live/2yz2AGLpU_k (“GSEB Meeting”).

² *Id.* at 5:43:35–50.

³ Ex. 1, *Scheduled Meeting*, DeKalb Cnty. Bd. of Registration & Elections at 16 (Sept. 12, 2024), <https://www.dekalbcountyga.gov/sites/default/files/users/user3667/BRE%20Materials%202024-09-11.pdf> (“DeKalb BRE Meeting”); see also *Board of Registration and Elections Meeting* at 1:26:15, DeKalb Cnty. Bd. of Registration & Elections (Sept. 12, 2024), https://dekalbcountyga.granicus.com/player/clip/4385?view_id=2&redirect=true (“September 12th Meeting”).

challenges that would be considered “a program of systematic removal” under federal law, including challenges that:

- (1) Do not rely upon individualized information or investigation to determine the validity of the individual challenges; or
- (2) Use a mass computerized data-matching process to compare the voter rolls with other state and federal databases; or
- (3) Lack unique identifiers, indicia of reliability, or evidence of authenticity; or
- (4) Lack reliable first-hand evidence specific to individual voters.⁴

The Resolution directs the Executive Director of the DeKalb County Department of Voter Registration and Elections to review all voter challenges received pursuant to “§ 21-2-230 for compliance with all applicable Federal, State, and Local laws, including the NVRA and Georgia Election Code,” to determine whether the challenge is a program of systematic removal, and if so, to “schedule, in consultation with the Board of Registration and Elections, a hearing to determine probable cause as soon as practicable, and in accordance with law, *after* the certification of the primary or general election and any required run-off election.”⁵ The Resolution was presented by the County Attorney following the release of guidance by the U.S. Department of Justice related to voter registration list maintenance confirming that “prohibitions of the NVRA extend to any list maintenance activity based on third-party submissions,” like Henderson’s submission, and that the NVRA’s 90-day quiet period before federal elections “applies to list maintenance programs based on third-party challenges derived from any large, computerized data-matching process.”⁶ As the

⁴ Ex. 1, DeKalb BRE Meeting at 16.

⁵ *Id.* at 17 (emphasis added).

⁶ Ex. 2, U.S. Dep’t of Justice, *Voter Registration List Maintenance: Guidance Under Section 8 of the National Voter Registration Act*, 52 U.S.C. § 20507 at 3–4 (Sept. 2024), <https://www.justice.gov/crt/media/1366561/dl> (“Dep’t of Justice Guidance”).

County Attorney explained at the September 12th meeting, the Board’s Resolution is meant to “provide[] a framework so that [the Board] and the public are aware of how those challenges are being treated during that 90 day period.”⁷

Henderson was present at the September 12th Meeting. He inquired about the status of his challenges, asked that they be put on the agenda, and was informed that instead the Board would hear a proposed Resolution regarding voter challenges like Henderson’s.⁸ As the Board explained, the Resolution would “go into effect with regard[] to all pending challenges.”⁹ Henderson thus had notice that his challenges—which fall squarely within the criteria for systematic removals as described in the Board’s Resolution—would not be fully processed until after the 2024 general election. Henderson’s challenges will be considered in full “as soon as practicable” following the election, a decision that harmonized the Board’s obligations under both federal and state law.

IV. Plaintiffs’ Lawsuit

Henderson and the DeKalb County Republican Party filed this lawsuit on September 17, 2024, approximately one month after Henderson first filed his challenges, and 49 days before the November general election. Plaintiffs did not serve their lawsuit on Defendants until October 1, 2024, two weeks after they filed their petition. Plaintiffs allege, among other things, that Henderson’s challenges are not contrary to the NVRA and that the Board is required to process his challenges immediately, including before the 2024 general election. Pet. ¶¶ 7, 18–22, 33.

As of the date of this filing, there are only 32 days until the election on November 5, 2024.

⁷ September 12th Meeting at 01:28:35–01:28:46.

⁸ *Id.* at 00:00:44–00:01:37.

⁹ *Id.* at 1:56:20–1:56:51.

ARGUMENT

I. Plaintiffs are not entitled to mandamus relief.

This Court should deny the Petition because Plaintiffs have not shown they are entitled to the extraordinary remedy of mandamus. “A writ of mandamus is an extraordinary remedy to compel a public officer to perform a required duty when there is no other adequate legal remedy.” *Se. Georgia Health Sys., Inc. v. Berry*, 362 Ga. App. 422, 423 (2022), *cert. denied* (Sept. 20, 2022) (internal quotation omitted). The Court has discretion to grant or deny mandamus relief. *Schrenko v. DeKalb Cnty. Sch. Dist.*, 276 Ga. 786, 794 (2003). Plaintiffs’ request fails on every score. They do not have a right to the relief they seek: forcing the Board to further process Henderson’s challenges this close to the election would be futile and even if they could be considered at this time, none establishes probable cause. Plaintiffs’ claims are further barred by the doctrine of laches. This Court should accordingly deny the writ.

A. Plaintiffs identify no clear legal right owed to them.

Mandamus is proper only if there is (1) no other adequate legal remedy available and (2) the applicant has a clear legal right to such relief. *Berry*, 362 Ga. App. at 423. A clear legal right to relief will exist either where the official fails entirely to act or where the official or agency commits a gross abuse of discretion in acting. *Madison v. Old 41 Farm, LLC*, 370 Ga. App. 172, 174 (2023), *reconsideration denied* (Nov. 17, 2023), *cert. denied* (May 14, 2024). Neither circumstance is present here.

Plaintiffs cannot identify any clear legal right owed to them. Section 21-2-230(b) provides that, following submission of a voter challenge, “the board of registrars shall immediately consider such challenge and determine whether probable cause exists to sustain such challenge.” The Board complied with this requirement when it considered the pending challenges before it—including Henderson’s challenges—at its September 12th meeting, and determined it could not lawfully

process any challenges like them because they constituted systematic removals of voters within 90 days of an election. The Board did not abuse its discretion when it made this determination. The law gives the Board significant discretion in how it processes and determines the outcome of challenges, and state law does not require the Board to hold a hearing to consider specific challenges. *See generally* O.C.G.A. § 21-2-230. Nor does it mandate finding probable cause under the circumstances presented here. *Id.*

Because state law does not require the Board to take any further action, Plaintiffs are not entitled to mandamus relief.

B. Mandamus relief would be futile.

Plaintiffs are separately not entitled to the relief they seek because it would be futile. *See* O.C.G.A. § 9-6-26 (“Mandamus will not be granted when it is manifest that the writ would, for any cause, be nugatory or fruitless”). The Board is prohibited from upholding Henderson’s challenges this close to the election under both federal and state law, so it would be futile to further consider them. Moreover, Henderson’s challenges do not meet the requisite probable cause standard (*see infra* at 14–16). *See Clayton Cnty. v. Evans*, 258 Ga. 146, 147 (1988) (“Impossibility of performance by the public official is universally recognized as a defense in mandamus proceedings.”). This Court need not issue a writ to require the Board to hold a hearing on Henderson’s challenges when the outcome would necessarily be the same. *See, e.g., Gilliam v. Green*, 122 Ga. 322, 50 S.E. 137, 139 (1905) (“To have required [election officials] to meet for the sole purpose of including in their consolidation the vote of the Flint Hill precinct would have been to have compelled them to do a vain thing, for, as before seen, the vote of that precinct would not have changed the result.”).

1. Both Federal and state law prohibit the Board from upholding Henderson’s challenges at this late date.

a. Henderson’s challenges are barred by the NVRA.

The mandamus relief Plaintiffs seek is futile because the Board cannot uphold Henderson’s challenges within 90 days of a federal election under the NVRA. Although Henderson argues the NVRA does not apply because he is challenging only the “eligibility” of a voter to participate in a specific election, rather than attempting to remove them from the rolls, *see* Pet. ¶ 22, successful challenges to the qualifications of voters under Section 230 result in the removal of an elector from the rolls, a result that violates the NVRA. *See supra* at 4; O.C.G.A. § 21-2-230(h). Moreover, as federal courts in Georgia have repeatedly found, a Section 230 challenge to a voter’s eligibility implicates the same rights that Congress meant to protect in the NVRA. *See Majority Forward v. Ben Hill Cnty. Bd. of Elections*, 512 F. Supp. 3d 1354, 1368 (M.D. Ga. 2021) (describing a challenge to a voter’s eligibility to vote versus a challenge to their eligibility to appear on list of electors as a “distinction without a difference” because the “effect of not appearing on the list of electors is the same as not being eligible to vote—a voter for whom a challenge is ultimately upheld will not be allowed to cast a ballot”); Ex. 3, Order at 13, *Fair Fight, Inc. v. Engelbrecht*, No. 2:20-cv-00302 (N.D. Ga. Jan. 4, 2021), ECF No. 29 (rejecting argument that Section 230 challenges did not implicate the NVRA because “[r]emaining registered, or on the list of eligible voters, is meaningless if one is precluded from voting”).

The Board could not accept Henderson’s challenges because they would violate Section 8 of the NVRA. Section 8 states that a “State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.” 52 U.S.C. § 20507(c)(2)(A). This 90-day deadline “applies to list maintenance programs based on

third-party challenges from any large, computerized data-matching process” in the same way it applies to the government’s own list maintenance activities.¹⁰ Although the NVRA itself does not provide a definition of what constitutes systematic removal, the Eleventh Circuit has explained that the “any program” language in Section 8 “suggests that the 90 Day Provision has a broad meaning.” *Arcia*, 772 F.3d at 1344; *see also Majority Forward v. Ben Hill Cnty. Bd. of Elections*, 509 F. Supp. 3d 1348, 1355 (M.D. Ga. 2020) (holding that “the challenge to thousands of voters less than a month prior to the Runoff Elections—after in person early voting had begun in the state—appears to be the type of ‘systematic’ removal prohibited by the NVRA”).

Under binding precedent, all three of Henderson’s challenges constitute systematic removals which are barred during the NVRA’s 90-day quiet period. His challenge to voters he alleges have nonresidential addresses, Pet. ¶ 9 & Ex. A, is not based on any individualized information but rather “a mass computerized data-matching process to compare the voter rolls with other [] databases.” *Arcia*, 772 F.3d at 1344. As Henderson himself admits, he created this challenge by making a “hash string” of mailing center addresses and matching it to the DeKalb County voter roll, *see supra* n.2, which is exactly the kind of computerized data-matching that is barred within the 90-day quiet period. *Arcia*, 772 F.3d at 1348.

The same is true with respect to Henderson’s challenge to voters he alleges should have been previously removed “as part of the mandated list maintenance procedures” given the voters’ inactive status and lack of contact with the County. Pet. ¶ 11 & Ex. B.¹¹ This is the definition of list maintenance, which is unquestionably barred within the 90-day quiet period. *See* 52 U.S.C. § 20507(c)(2)(A). Henderson’s own description of his challenge confirms that it would constitute

¹⁰ Ex. 2, Dep’t of Justice Guidance at 4.

¹¹ The Petition cites Exhibit C, but the information described is in Exhibit B.

a systematic removal, and is not based on a rigorous, individualized inquiry. Henderson admits he relied on an aggregate data set to challenge these voters and relied on certain assumptions about what the data must mean. *See, e.g.*, Pet., Ex. B (discussing his “systematic modifications” to certain data to compile his challenge and the need to make certain assumptions about the data to interpret it).

Removing voters based on a comparison of Georgia’s voter rolls to the NCOA database and Florida’s voter rolls, as Henderson’s final challenge proposes, would also constitute a prohibited systematic removal during the 90-day quiet period. Pet. ¶ 10 & Ex. C.¹² Courts have previously recognized that election officials may not remove voters based on challenges that use mass change-of-residency data during the 90-day quiet period. In *N. Carolina State Conf. of NAACP v. Bipartisan Bd. of Elections & Ethics Enforcement*, for example, individuals challenged registered voters in two counties on residency grounds based on allegations that mail sent to those voters had been returned as undeliverable. No. 1:16CV1274, 2018 WL 3748172, at *8–9 (M.D.N.C. Aug. 7, 2018). The court held that “the cancellation of these . . . voters’ registrations lacked the individualized inquiry necessary to survive the NVRA’s prohibition on systematic removals within 90 days of a federal general election.” *Id.* at *9. And the court explained that the “County Board’s effort to obtain individualized information” about the voters challenged “occurred too late in the process to provide the safeguards against disenfranchising voters that Congress intended in enacting the NVRA.” *Id.*

Challenges to voters’ eligibility based on NCOA data are prohibited during the 90-day quiet period because they lack rigorous, individualized information and are thus particularly likely to be erroneous. As a Georgia federal district court considering an NCOA challenge recently

¹² The Petition cites Exhibit B, but the information described is in Exhibit C.

explained, given “the prevalence of voters with the same names and birthdates, the fact that a Georgia voter’s first and last name and date of birth appear in another state’s voter registration database does not mean that the same Georgia voter has been identified in the other state’s registration.” *Majority Forward*, 512 F. Supp. 3d at 1360 (finding Plaintiffs demonstrated likelihood of success on claim that Defendants violated NVRA’s 90-day provision by accepting mass challenges based on NCOA data). Yet this kind of evidence is exactly what Henderson presented to the Board. *See supra* at 5. His challenges are barred by the NVRA.

b. Henderson’s challenges are barred by Section 230.

Georgia law, like federal law, also bars the Board’s consideration of Henderson’s challenges this close to the election. Under Georgia law, “[a]ny challenge of an elector within 45 days of a primary, run-off primary, election, or run-off election shall be postponed until the certification of such primary, election, or runoff is completed.” O.C.G.A. § 21-2-230(b)(1). This provision, which was recently added by the Georgia General Assembly this spring after election officials had to navigate mass voter challenges filed close-in-time to the 2020 and 2022 elections, is meant to prevent erroneous removals and the type of chaos that Henderson’s mass challenges would invariably cause this close to the election. *See, e.g.,* Ex. 3, Order at 11, *Fair Fight, Inc. v. Engelbrecht*, No. 2:20-cv-00302 (N.D. Ga. Jan. 1, 2021), ECF No. 29 (remarking, before Section 230’s amendment to prohibit challenges within 45 days of an election, about the Court’s “grave concerns” regarding a mass challenge to thousands of “Georgia voters on the eve of an unprecedented two-seat Senate runoff”); *Majority Forward*, 509 F.3d at 1355 (similarly remarking on the thousands of voters challenged less than a month before the runoff elections).

Because the Board cannot accept Henderson’s challenges this close to the election under Georgia law, any mandamus relief requiring the Board to hear his challenges before the election is “nugatory,” O.C.G.A. § 9-6-26, and consequently bars his request for relief.

2. Plaintiffs' challenges fail to establish mandatory probable cause.

To the extent the real relief that Plaintiffs seek is not just for the Board to “consider” Henderson’s challenges, but to find probable cause to sustain them, Plaintiffs would not be entitled to such a finding either. Plaintiffs’ challenges cannot be upheld under federal or state law for the reasons described above, *see supra* at 10–13. Nor do Henderson’s challenges support a probable cause finding on the merits, as shown below.

a. Challenges Based on Alleged Non-Residential Addresses

Henderson challenges 169 voters on the grounds that they have residential addresses that “are the addresses of either U.S. Post Offices, UPS Stores or other Mail Center businesses that are stand-alone structures.” Pet. Ex. A at 1. While Section 230 recognizes that a challenge alleging that a voter is registered at a non-residential address can support a probable cause finding, it does so only if such address is “confirmed or listed by or in a government office, data base, website, or publicly available sources derived *solely* from such governmental sources.” O.C.G.A. § 21-2-230(b) (emphasis added). Henderson does not contend that the websites he used to conduct his analysis rely solely on government sources, and they plainly do not. Henderson admits that he used *postofficepage.com*, *locations.upsstore.com*, and Google Maps—none of which are government websites or purport to rely solely on governmental sources. *See* Pet., Ex. A at 2. The Board would consequently have no reason to find probable cause for Henderson’s challenges based on alleged non-residential addresses.

b. Challenges Based on Alleged Matches with the NCOA List and Florida Voter File

Henderson challenges 185 voters on the grounds that the voters were listed on the NCOA list and were also registered to vote in Florida. Henderson testified that he obtained the information

he relied on in his challenges from Florida Secretary of State’s website.¹³ Notably, the Florida Secretary of State’s website explicitly states that it is only to be used by voters to determine their own voter registration and voting status.¹⁴ Henderson’s misuse of this data alone is reason enough not to find probable cause.

Further, although Section 230 permits a county to find probable cause when an elector has registered to vote or voted in another jurisdiction, Henderson’s challenges do not have sufficient indicia of reliability to find probable cause in this instance. Even a cursory review of some of Henderson’s challenges demonstrates the unreliability of the evidence Henderson presented to the Board. For example, Henderson challenges voters who have similar but not identically matching names with the same birth year that appear in both Georgia’s and Florida’s voter rolls. *See, e.g.*, Pet., Ex. C at 6 (challenging Georgia voter “Margaret Joan Cottrill” because a voter named “Margaret Joan Chatlain” with the same birth year is registered in Florida.); *id.* at 14 (challenging Georgia voter “Michele Blovet Allen” after identifying a “Michele Ann Allen” with the same birth year in Florida’s registration database). Unless Henderson knows these voters personally—and he admits that he does not¹⁵—the evidence presented plainly does not establish that these individuals with different names and potentially different birthdates are the same person. Instead, these examples demonstrate exactly why mass, unsubstantiated challenges like Henderson’s are so dangerous, particularly on the eve of an election.

¹³ GSEB Meeting at 5:44:31–5:45:20.

¹⁴ *See Voter Information Look Up*, Florida Dep’t of State, <https://registration.elections.myflorida.com/en/CheckVoterStatus/Index> (last accessed Sept. 30, 2024) (“This website is intended for use by a registered voter to determine his or her voter registration and voting status. It is unlawful to knowingly alter another person’s voter registration information or to attempt, assist with, or otherwise commit fraud in connection with the right to vote. See §§ 104.011, 104.041, and 104.41, Fla. Stat.”) (last accessed Oct. 4, 2024).

¹⁵ *See, e.g.*, Pet., Ex. A at 2 (“I further testify that I do not personally know any of these electors[.]”).

Although Henderson also alleges at least some of these voters have voted in the state of Florida since registering there, *see* Pet. Ex. C at 2, Henderson presents absolutely no evidence of this whatsoever, and does not explain where he would have obtained this information. Certainly, NCOA lists would not provide this information, and the information Henderson relays from the Florida Secretary of State’s voter lookup tool does not appear to provide this information either.

c. Challenges Based on Alleged Failure to Follow List Maintenance Procedures

Henderson challenged nearly 5,000 voters on the grounds that they “should have been removed from the county’s voter roll in 2023” “as part of the mandated list maintenance procedures.” Pet., Ex. B at 1–2. Notably, Henderson does not actually allege that these voters currently qualify for removal from the rolls—instead, he argues only that if the Secretary had complied with O.C.G.A. § 21-2-234 in 2019, and moved these voters to inactive status that year, *then* they would have been removed from the rolls in 2023. *See id.* at 1-4.

As Henderson all but admits, because the Secretary did not move those voters to inactive status until after the 2020 general election, *see id.* at 3, these voters do not currently qualify for removal because two general election cycles have not yet passed while they have been on inactive status. *See id.*; *see also* O.C.G.A. § 21-2-235(b) (“An elector placed on the inactive list of electors *shall remain on such list* until the day after the second November general election held after the elector is placed on the inactive list of electors.”) (emphasis added). Under the present circumstances, none of these voters can be “removed from the inactive list of electors” until after the 2024 general election—the second general election since being placed on inactive status.

II. Plaintiffs’ claims are barred by the equitable doctrine of laches.

Even if Henderson’s challenges had merit—and they do not—the Court should decline to grant mandamus relief under the equitable doctrine of laches. “Equity gives no relief to one whose

long delay renders the ascertainment of the truth difficult, even when no legal limitation bars the right.” O.C.G.A. § 23-1-25; *see also* O.C.G.A. § 9-3-3 (providing, in relevant part, that “courts of equity may interpose an equitable bar whenever, from the lapse of time and laches of the complainant, it would be inequitable to allow a party to enforce his legal rights”). Under the doctrine of laches, a plaintiff is not entitled to equitable relief “when he has unreasonably delayed in seeking that relief and such delay is prejudicial to the person from whom the relief is sought.” *Head v. Planet Home Lending, LLC*, 370 Ga. App. 152, 158 (2023); *see also Marsh v. Clarke Cnty. Sch. Dist.*, 292 Ga. 28, 29 (2012) (holding mandamus actions can be barred by laches). A determination that a claim is barred by laches is within the sound discretion of the trial court. *Waller v. Golden*, 288 Ga. 595, 597 (2011).

Here, Plaintiffs inexcusably delayed bringing their claims and have now inexcusably delayed prosecuting their suit, waiting a whole two weeks to serve Defendants just 35 days before the election. This delay began when Henderson filed his mass challenges to more than 5,000 DeKalb County voters in mid-August—fewer than three months before a federal election and when the Board was already inundated in election work, including but not limited to “working diligently six days a week, some 12-hour days”¹⁶ processing voter registrations and absentee and UOCAVA ballot requests—despite Henderson having had access to the voter rolls at any time. Indeed, one of Henderson’s challenges specifically identifies voters that Henderson contends the Secretary should have marked as inactive in 2019—over five years ago. There is no reason why Henderson could not have brought these challenges sooner.

The relief Plaintiffs seek is extremely prejudicial to voters like Vet Voice’s constituents, who are disproportionately likely to move frequently and who may be unable to defend themselves

¹⁶ September 12th Meeting, *see supra* n.3 at 00:47:37–00:47:42.

against a challenge because they may be temporarily based out of state serving our country. Plaintiffs' delay also has real consequences for the County's ability to run its election without last-minute interference. Granting Plaintiffs relief after their inexcusable and unreasonable delay would impermissibly "upend the orderly progression of state electoral processes at the eleventh hour." *Perry v. Judd*, 471 F. App'x 219, 220–21 (4th Cir. 2012) (affirming district court finding that laches barred challenge to Virginia election law when plaintiffs waited until mere weeks before the 45-day absentee ballot availability deadline to file suit).

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' Petition and dismiss this lawsuit with prejudice.

Dated: October 4, 2024

Aria C. Branch*
Christina Ford*
Melinda K. Johnson*
ELIAS LAW GROUP LLP
250 Massachusetts Avenue NW
Suite 400
Washington, D.C. 20001
Phone: (202) 968-4517
abran@elias.law
cford@elias.law
mjohnson@elias.law

Makeba A.K. Rutahindurwa*
ELIAS LAW GROUP LLP
1700 Seventh Avenue
Suite 2100
Seattle, Washington 98101
Phone: (202) 968-4599
mrutahindurwa@elias.law

Respectfully submitted,

By: /s/ Adam M. Sparks

Adam M. Sparks
Georgia Bar No. 341578
Anré D. Washington
Georgia Bar No. 351623
KREVOLIN AND HORST, LLC
One Atlantic Center
1201 W. Peachtree Street, NW, Suite 3250
Atlanta, GA 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
sparks@khlawfirm.com
washington@khlawfirm.com

*Counsel for Proposed Intervenor-Defendant
Vet Voice Foundation*

**Pro Hac Vice Application Pending*

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

WILLIAM HENDERSON, DEKALB
COUNTY REPUBLICAN PARTY, INC.,

Plaintiffs,

v.

VASU ABHIRAMAN, in his official capacity;
NANCY JESTER, in her official capacity;
ANTHONY LEWIS, in his official capacity;
SUSAN MOTTER, in her official capacity;
KARLI SWIFT, in her official capacity,

Defendants.

Civil Action File No. 2024CV8564

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court via *Odyssey eFileGA*, which will provide notice and service to all counsel of record, and by electronic mail to the following:

CHALMERS ADAMS BACKER &
KAUFMAN LLC
Alex B. Kaufman
Georgia Bar No. 136097
Kevin T. Kucharz
Georgia Bar No. 713718
Chalmers, Adams, Backer & Kaufman, LLC
100 N. Main St.
Suite 340
Alpharetta, GA 30009
akaufman@chalmersadams.com
kkucharz@chalmersadams.com
(404) 964-5587

This 4th day of October, 2024.

/s/ Adam M. Sparks
Adam M. Sparks
Georgia Bar No. 341578
*Counsel for Proposed
Intervenor-Defendant*

Exhibit 1

RETRIEVED FROM DEMOCRACYDOCKET.COM



BOARD OF REGISTRATION AND ELECTIONS SCHEDULED MEETING

September 12, 2024

4:30 PM

VRE AB Area

DCTV's UStream channel: <https://video.ibm.com/channel/xUJgKs6n2VW>

- 1. ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. APPROVAL OF MINUTES**
 - A. August 8, 2024 Scheduled Meeting (p. 2)
- 4. PUBLIC COMMENTS**
- 5. ITEMS FOR DISCUSSION**
 - A. Director's Report (p. 7)
- 6. ITEMS FOR DECISION**
 - A. Advance Voting Drop Box Locations
 - B. Voter Challenges Scheduling Resolution (p. 16)
 - C. Voter Challenge Procedures
 1. O.C.G.A. 21-2-229 (p. 18)
 2. O.C.G.A. 21-2-230 (p. 23)
- 7. EXECUTIVE SESSION**
- 8. BOARD COMMENTS**
- 9. ADJOURNMENT**

DeKalb County Board of Registration and Elections

Meeting Minutes

August 8, 2024

Start Time: 4:48 p.m.

End Time: 8:33 p.m.

Board Attendees: Karli Swift, Chair
Vasu Abhiraman, Vice-Chair
Nancy Jester
Anthony Lewis
Susan Motter

Other Attendees: Keisha Smith, Executive Director
Terry Phillips, Deputy County Attorney
Shelley Momo, Supervising Attorney
Tristen Waite, Assistant County Attorney

APPROVAL OF AGENDA

Chair Swift called the Board of Registration and Elections meeting to order at 4:48 p.m. Ms. Austin read the roll by calling each board member by name. A quorum was met.

Motion by Ms. Motter, seconded by Mr. Lewis to approve the agenda. The motion carried unanimously.

APPROVAL OF MINUTES

Motion by Mr. Lewis, seconded by Ms. Jester, to approve the minutes of the July 11 scheduled meeting. The motion passed unanimously.

PUBLIC COMMENTS

Ms. Austin read the rules for public comment:

Public comments may be made in person or submitted by sending an email of one printed page or less at a minimum font of 12 to electionspubliccmnt@dekalbcountyga.gov which must be received between 35 and 5 minutes before the scheduled start of the meeting. The body of your email must include your first and last name. By submitting an email for public comment, you agree to have your name and the email broadcast on the UStream and entered into the record and minutes. The DeKalb Board of Registration and Elections reserves the right, at the DeKalb Board of Registration and Elections' sole discretion, to (1) add your email to the record/minutes without reading any of it into the broadcast or (2) read all or a portion of your email into the record/minutes. All public comments will be limited to 2 minutes. Abusive, profane, or derogatory language, holding up signs, clapping, yelling, standing or laying in the aisles to show support for or opposition to a speaker will

not be permitted, but a show of hands or quietly standing in place will be permitted to show support for or opposition to a speaker's position.

The following citizens provided public comment:

- Betsy Shackelford
- Lisa Wright
- Stephen Cook
- Janet Grant
- Karen McCown
- Cheryl Dudley
- Naomi Bock
- Toi Elizabeth Hines
- Gail Lee
- Joan Webb
- Lynn Hesse
- Kathleen Hamill
- Bethann Frillman
- Catherine Carter
- Doug Cumming
- Nancy Arnold
- Jim Leimbach
- Abbie Lane
- Amy Swygert

ITEMS FOR DISCUSSION

A) Voter Challenge Procedures

1.) O.C.G.A. 21-2-229

Chair Swift began by asking the Law Department for an overview of this discussion item. Ms. Momo stated that the Board had adopted the last O.C.G.A. 21-2-229 procedures in 2021 and that only a few changes were being recommended to remain consistent with Georgia law and to make the procedures read easier.

Motion by Ms. Jester and seconded by Mr. Lewis to approve the changes to O.C.G.A. 21-2-229 as presented for discussion purposes only. Further discussion ensued.

Motion by Ms. Jester and seconded by Mr. Lewis to amend her motion to include O.C.G.A. 21-2-230 in the previously stated motion.

2.) O.C.G.A. 21-2-230

Chair Swift stated that the Board did not previously have procedures for challenges based on O.C.G.A. 21-2-230 and asked for an overview from the Law Department.

Ms. Momo stated that O.C.G.A. 21-2-230 challenges are to a voter's eligibility to vote in an election and that these procedures would control the probable cause hearings and any

subsequent hearings. She further stated that these procedures would track the required procedures to make sure that the legal requirements are followed and that the statute in these procedures would set forth what needs to happen if probable cause is found. Further discussion ensued.

Ms. Jester withdrew the previously stated motions as the challenge procedures were a discussion item and no decision was required.

B) Director's Report

Director Smith reported on registration, elections, warehouse, budget, personnel, facilities, training, and communications activities. She reported that there was a significant change in registration numbers due to regular list maintenance, returned mail, NCOA and cross-state activities. Registration numbers as of August 8, 2024, were reported as; Active: 452,816; Inactive: 122,119; Total Registered: 574,935. She stated that to ensure VRE connects with as many impacted individuals as possible, she would work with the PR consultant to implement a multi-level approach to engage with inactive voters. The effort will include marketing and press releases, social media campaigns, direct mail, community ads in the legal organ and local newspapers and engagement with stakeholders via email and telephone. Director Smith mentioned the team's activities around the nomination petitions received from the SOS for the three (3) independent presidential candidates. She also stated that effective this fall, there will be an increase in the pay rates for all poll workers to re-align with the pay rates of other large counties for equity in pay. She reported on the budget and noted that requested budget adjustments were delayed as there was a system migration. Lastly, she reported the ongoing outreach activities.

Mr. Lewis thanked Director Smith for the enhancements that were made to the Director's Report to include the registration numbers. He also asked Director Smith if she anticipated needing additional funding. Director Smith replied that due to the effort of controlling expenses and overall budget management, an increase may not be needed. She added that the largest expense is generally in the budget for poll worker payroll. Mr. Lewis asked if the increase in poll worker salaries would be covered with the funds available in the budget. Director Smith replied affirmatively.

Ms. Jester thanked Director Smith for the detailed Director's Report. She asked for the approximate percentage for the salary increases. Director Smith replied that the increase would be at least 20% and stated that things were still being finalized. Ms. Jester asked additional questions about list maintenance activities and the correlation of active voters to drop box locations. Director Smith replied that the code dictates that counties can establish one (1) drop box plus an additional drop box per every 100,000 active voters. Further discussion ensued around the state's new voter registration cancellation request portal and other operations.

ITEMS FOR DECISION

A) Advance Voting

Director Smith proposed the locations, dates, and times for advance in person voting. She further mentioned that the Memorial Drive drop box would be removed if the 500,000 active voter threshold is not reached. She also advised that the Stonecrest location was still being finalized.

Ms. Motter asked how many advance voting locations were utilized in 2016 and 2020 and how that compares to the number of locations being proposed for 2024. She also asked which five (5) locations are typically the busiest and which days of advance voting are typically the busiest as

well. Director Smith replied that the amount of advance voting locations being proposed is almost double of what was used in 2016. She also stated that Memorial Drive, Dunwoody Library, and Tucker-Reid Library are usually the top three (3) busiest locations with fluctuations for the 4th and 5th busiest locations. Director Smith also stated that the last two (2) days of advance voting are typically the busiest. Ms. Motter further asked for the explanation as to why there are gaps in locations to the east and in the southwest corner of the county. Director Smith replied that staff did attempt to identify sites in those areas, however, there were not many sites to choose from that meet the requirements of the law.

Mr. Lewis said that this is the most AIP sites that VRE has had since he has been on the Board and commended the staff for their work. He asked if the staff had been working on a wait time reporting tool for the website. Director Smith replied affirmatively and further stated that the wait times will be reported on the website as well as on social media. She also said that each location will have 4'X4' signs that display all of the advance voting sites.

Chair Swift asked if more libraries could be added as advance voting sites. Director Smith replied that she spoke with the Director of DeKalb Libraries and due to programming, they are unable to accommodate additional sites. She also asked if the hours for advance voting on Saturdays could be extended from 9am-5pm to 9am-7pm and Director Smith replied affirmatively.

Motion by Ms. Jester seconded by Ms. Motter to approve the advance voting locations presented with the amendment of Saturday voting on October 19 and 26 to be allowed until 7pm. The motion passed unanimously. Ms. Jester noted for the record that the approval of the AIP sites did not include the drop boxes and that they would be finalized in September.

B) Probable Cause Determination for Voter Challenges Pursuant to O.C.G.A. 21-2-230

Chair Swift stated that on Friday, July 26, a challenge was received from Victor Tripp challenging 181 electors due to their birth years. Secondly, she stated that on Tuesday, July 30, a challenge was received from Gail Lee challenging 230 electors due to being registered in Georgia and another state. She further explained that the Board would first determine whether probable cause had been met to schedule hearings for the challenged voters.

Motion by Ms. Jester seconded by Mr. Lewis to conduct the probable cause hearing for voter challenges pursuant to O.C.G.A. 21-2-230 and make a determination on the probable cause.

1.) Victor Tripp offered testimony and evidence related to the voter challenges he submitted.

After Mr. Tripp presented, the Board deliberated on the evidence and Chair Swift called for a motion.

Motion by Ms. Jester and seconded by Mr. Lewis to find probable cause for the O.C.G.A. 21-2-230 challenges presented by Mr. Tripp. The motion failed 2-3 with Chair Swift, Vice-Chair Abhiraman, and Ms. Motter voting nay.

Motion by Ms. Jester and seconded by Vice-Chair Abhiraman to not find probable cause for the O.C.G.A. 21-2-230 challenges presented by Mr. Tripp. The Motion passed 3-2 with Mr. Lewis and Ms. Jester voting nay.

Motion by Ms. Jester seconded by Vice-Chair Abhiraman to conduct the probable cause hearing for voter challenges presented by Gail Lee pursuant to O.C.G.A. 21-2-230 and make a determination on the probable cause.

- 2.) Gail Lee offered testimony and evidence related to the voter challenges she submitted. Viviane H. Ernstes, the County Attorney, provided an overview of the decision rendered in 2021 in the Majority Forward v. Ben Hill Board of Elections case regarding voter challenges.

At the conclusion of Ms. Lee's presentation, the Board deliberated on the evidence and Chair Swift called for a motion.

Motion by Ms. Jester and seconded by Mr. Lewis to find probable cause for the O.C.G.A. 21-2-230 challenges presented by Ms. Lee. The motion failed 2-2 with Chair Swift and Ms. Motter voting nay.

BOARD COMMENTS

Mr. Lewis thanked the public, the staff, and the Law Department.

Ms. Jester also thanked the public, the staff, and the Law Department.

Ms. Motter thanked the staff and the County attorneys.

ADJOURNMENT

Motion by Ms. Jester, seconded by Mr. Lewis, to adjourn. The motion carried unanimously. The meeting was adjourned at 8:33 p.m.

Director's Report

September 12, 2024

Keisha L. Smith, MPA

Executive Director

Voter Registration and Elections (VRE)

Topic 1: General Operations Updates

- ❖ Registration
 - Total number of Registered Voters in DeKalb County as of September 10th: 582,349
 - Total number of Active Registered Voters: 465,808
 - Total number of Inactive Registered Voters: 116,541
 - DDS: 10,649
 - OLVR: 7,876
 - MVP: 6,640
 - Handwritten: 6,469
 - Total updates/applications received since the VR Deadline: 31,634
 - Manual Voter Registration Cancellations for 2024: 974
- ❖ Election Activities
- ❖ Notes:

Topic 2: Administrative/Finance Updates

- ❖ Personnel | Facilities
- ❖ Budget Activities (pg. 8)
- ❖ Notes:

Topic 3: Stakeholder Engagement Updates

- ❖ Key Stakeholder Meetings | Activities (pg. 10)
- ❖ General Communications
- ❖ Notes:

**VOTER REGISTRATION AND ELECTIONS
AVAILABLE FUNDS REPORT
AUGUST - 2024
(100-02900)**

COST CENTER DESCRIPTION	OBJECT CLASS	OBJECT CODE DESCRIPTION	SUM OF BUDGET	SUM OF COMMITMENTS	SUM OF OBLIGATIONS	SUM OF EXPENDITURES	SUM OF FUNDS AVAILABLE
02900-REGISTRAR	51	511101-SALARIES	3,813,752	0	0	1,000,152	2,813,600
02900-REGISTRAR	51	511102-SALARIES - PART TIME	0	0	0	9,386	-9,386
02900-REGISTRAR	51	511199-SALARIES - ADJUSTMENTS	73,365	0	0	0	73,365
02900-REGISTRAR	51	511200-SALARIES - TEMPORARY	8,814,861	0	0	2,596,996	6,217,865
02900-REGISTRAR	51	511300-SALARIES - OVERTIME	755,000	0	0	163,630	591,370
02900-REGISTRAR	51	512100-COUNTY MATCH - GROUP INSURANCE	0	0	0	137,571	-137,571
02900-REGISTRAR	51	512101-COUNTY MATCH - GRP INS - REVERSAL	0	0	0	-137,570	137,570
02900-REGISTRAR	51	512102-COUNTY MATCH - GRP INS - ALLOCATED	399,000	0	0	266,000	133,000
02900-REGISTRAR	51	512200-COUNTY MATCH - FICA	144,677	0	0	201,608	-56,931
02900-REGISTRAR	51	512400-COUNTY MATCH - PENSION	0	0	0	0	0
02900-REGISTRAR	51	512402-401(a) EMPLOYER CONTRIBUTION	51,793	0	0	24,657	27,137
02900-REGISTRAR	51	512700-WORKERS COMPENSATION	51,871	0	0	34,583	17,288
02900-REGISTRAR	51	512904-ALLOWANCE - AUTOMOBILE	10,000	0	0	2,750	7,250
02900-REGISTRAR	51 Total	Personal Services and Employee Benefits Total	14,116,329	0	0	4,299,761	9,814,558
02900-REGISTRAR	52	521101-BOARD MEMBER SERVICES	12,000	0	400	6,400	5,200
02900-REGISTRAR	52	521104-TEMPORARY PERSONNEL SERVICES	1,792,000	0	167,714	791,549	832,737
02900-REGISTRAR	52	521105-SECURITY SERVICES	100,000	0	28,065	59,257	12,677
02900-REGISTRAR	52	521209-OTHER PROFESSIONAL SERVICES	1,655,180	329,125	603,021	691,794	31,241
02900-REGISTRAR	52	522130-CUSTODIAL SERVICES	0	0	0	5,644	-5,644
02900-REGISTRAR	52	522201-MAINTENANCE & REPAIR SERVICES	67,924	0	13,160	7,420	47,344
02900-REGISTRAR	52	522311-RENTAL OF REAL ESTATE	390,000	0	0	185,000	205,000
02900-REGISTRAR	52	522321-RENTAL OF EQUIPMENT	64,000	0	0	625	63,375
02900-REGISTRAR	52	522322-LEASE PURCHASE OF EQUIPMENT	70,004	0	0	8,236	61,768
02900-REGISTRAR	52	522329-OTHER RENTALS	33,948	0	14,243	12,600	7,105
02900-REGISTRAR	52	523001-OTHER SERVICES - NON PROFESSIONAL	0	0	856	1,037	-1,892
02900-REGISTRAR	52	523201-POSTAGE	192,996	0	16,323	539,502	-362,829
02900-REGISTRAR	52	523202-POSTAGE - CENTRAL SERVICES	27,552	0	0	-178,562	206,114
02900-REGISTRAR	52	523203-TELEPHONE SERVICE	5,340	0	0	0	5,340
02900-REGISTRAR	52	523204-TELEPHONE - LONG DISTANCE	2,308	0	0	242	2,066
02900-REGISTRAR	52	523206-INTERNET SERVICES	5,640	0	1,170	0	4,470
02900-REGISTRAR	52	523207-TELEPHONE - WIRELESS	236,944	0	0	101,787	135,157
02900-REGISTRAR	52	523301-ADVERTISING SERVICES	3,980	0	52,527	350,981	-399,528
02900-REGISTRAR	52	523401-PRINTING SERVICES	25,488	0	3,641	21,150	697
02900-REGISTRAR	52	523501-MILEAGE - PERSONAL VEHICLE	3,100	0	0	80	3,020

**VOTER REGISTRATION AND ELECTIONS
AVAILABLE FUNDS REPORT
AUGUST - 2024
(100-02900)**

COST CENTER DESCRIPTION	OBJECT CLASS	OBJECT CODE DESCRIPTION	SUM OF BUDGET	SUM OF COMMITMENTS	SUM OF OBLIGATIONS	SUM OF EXPENDITURES	SUM OF FUNDS AVAILABLE
02900-REGISTRAR	52	523504-TRAVEL - ACCOMMODATIONS / HOTEL	4,800	0	387	0	4,413
02900-REGISTRAR	52	523505-TRAVEL - PER DIEM	5,000	0	0	120	4,880
02900-REGISTRAR	52	523510-TRAVEL ADVANCES	0	0	0	0	0
02900-REGISTRAR	52	523601-DUES	1,000	0	2,000	65	-1,065
02900-REGISTRAR	52	523701-TRAINING & CONFERENCE FEES - EXTERNAL	39,000	0	885	912	37,203
02900-REGISTRAR	52	523702-TRAINING & CONFERENCE FEES - INTERNAL	552	0	0	224	328
02900-REGISTRAR	52	523906-ELECTION EXPENSES	100,755	0	12,796	156,514	-68,554
02900-REGISTRAR	52 Total	Purchased/Contracted Services Total	4,839,511	320,125	917,186	2,762,578	830,622
02900-REGISTRAR	53	531101-OPERATING SUPPLIES	981,001	770	219,852	393,015	367,364
02900-REGISTRAR	53	531112-MAINTENANCE & REPAIR MATERIALS - OTHER	0	0	0	0	0
02900-REGISTRAR	53	531199-FREIGHT	2,000	0	0	0	2,000
02900-REGISTRAR	53 Total	Supplies Total	983,001	770	219,852	393,015	369,364
02900-REGISTRAR	54	542201-COMPUTER EQUIPMENT	92,204	0	0	6,505	85,699
02900-REGISTRAR	54	542202-COMPUTER SOFTWARE and TECHNOLOGY	210,000	0	0	6,224	203,776
02900-REGISTRAR	54	542309-OTHER EQUIPMENT > \$5,000	100,038	0	0	10,831	89,207
02900-REGISTRAR	54 Total	Capital Outlays Total	402,242	0	0	23,560	378,682
02900-REGISTRAR	55	551104-VEHICLE MAINTENANCE CHARGE	4,133	0	0	0	4,133
02900-REGISTRAR	55	551105-VEHICLE REPLACEMENT CHARGE	3,048	0	0	2,032	1,016
02900-REGISTRAR	55	551107-VEHICLE INSURANCE CHARGE	500	0	0	336	164
02900-REGISTRAR	55	551141-VEHICLE MAINT - FUEL	0	0	0	6,253	-6,253
02900-REGISTRAR	55	551142-VEHICLE MAINT - PREV MAINT	0	0	0	876	-876
02900-REGISTRAR	55	551143-VEHICLE MAINT - REPAIRS	0	0	0	3,316	-3,316
02900-REGISTRAR	55	551144-VEHICLE MAINT - OVERHEAD	2,095	0	0	1,400	695
02900-REGISTRAR	55 Total	Interfund/Interdepartmental Charges Total	9,776	0	0	14,213	-4,437
02900-REGISTRAR	70	707009-COUNTY PENSION ALLOCATION	243,545	0	0	162,361	81,184
02900-REGISTRAR	70 Total	Retirement Services Total	243,545	0	0	162,361	81,184
GRAND TOTAL			20,592,394	329,895	1,137,038	7,655,488	11,469,973

DeKalb County Voter Registration & Elections Outreach Calendar

Date	Type of Event	Group	Location	Time
September				
9/12/2024	Student Involvement Fair	Ga State University	Ga State University-Dunwoody 2101 Womack Rd Dunwoody, GA 30338	11 a.m. – 2 p.m.
9/13/2024	Voter Education	Commissioner Michelle Long Spears Civics Class	Commissioner Michelle Long Spears 1300 Commerce Dr Decatur, GA 30030	11 a.m. – 2 p.m.
9/16/2024	Voter Registration/Education	Clairmont Oaks	Clairmont Oaks 441 Clairmont Ave Decatur, GA 30030	1:30 p.m. – 3 p.m.
9/17/2024	Voter Education	disABILITY Link	disABILITY Link 1901 Montreal Rd, Ste 102 Tucker, GA 30084	10 a.m. – 1 p.m.
9/17/2024	Voter Registration/Education	Doraville MARTA Station	Doraville MARTA Station 6000 New Peachtree Rd Doraville, GA 30340	3 p.m. – 5:30 p.m.
9/17/2024	Voter Registration/Education	Delta Sigma Theta Decatur Alumnae Chapter	Lou Walker Senior Center 2538 Panola Rd Lithonia, GA 30058	10 a.m. – 8 p.m.
9/18/2024	Voter Registration/Education	DeKalb County Schools	Stone Mountain High School 4555 Central Dr Stone Mountain, GA 30083	11 a.m. – 1:30 p.m.
9/18/2024	Voter Education Workshop	Covington Library	Covington Library 3500 Covington Hwy Decatur, GA 30032	6 p.m. – 7:30 p.m.
9/19/2024	Voter Education Workshop	Voter Education & Registration	DeKalb County Public Library Administrative Offices 3560 Kensington Rd Decatur, GA 30032	9 a. m. – 11 a.m.

9/19/2024	Voter Registration/Education	Philips Tower Senior Living	Philips Tower Senior Living 218 E. Trinity Pl Decatur, GA 30030	11 a.m. – 2 p.m.
9/19/2024	Voter Registration/Education	DeKalb County Schools	McNair High School 1804 Bouldercrest Rd, SE Atlanta, GA 30316	11 a.m. – 1:30 p.m.
9/19/2024	Voter Registration/Education	DeKalb County Schools	Arabia Mountain High School 6610 Browns Mill Rd Stonecrest, GA 30038	11 a.m. – 1:30 p.m.
9/20/2024	Voter Registration/Education	DeKalb County Schools	Druid Hills High School 1798 Haygood Dr, NE Atlanta, GA 30307	11 a.m. – 1:30 p.m.
9/21/2024	Voter Registration/Education	Stand Inc., "The Door" DeKalb	Stand Inc. 4086 Covington Hwy Decatur, Ga 30032	10 a.m. – 4 p.m.
9/23/2024	Deputy Registrar Training	Deputy Registrar	Virtual via Zoom	6 p.m. - 8 p.m.
9/28/2024	Voter Registration/Education	North Decatur United Methodist Church	North Decatur United Methodist Church 1523 Church St Decatur, GA 30033	11 a.m. – 2 p.m.
October				
10/5/2024	Registered & Ready Block Party	DeKalb VRE	Voter Registration & Elections 4380 Memorial Dr, Ste 300 Decatur, GA 30032	10 a.m. - 3 p.m. (9 a.m. set-up)
10/9/2024	Voter Education	DeKalb VRE/MARTA	Decatur MARTA Station 400 Church St Decatur, GA 30030	3 p.m. - 5:30 p.m.
10/9/2024	Voter Education	DeKalb VRE/MARTA	Chamblee MARTA Station 5200 Peachtree Rd Chamblee, GA 30341	3 p.m. - 5:30 p.m.
10/12/2024	Voter Education Fire & Rescue Safety Festival	DeKalb County Fire & Rescue Department	Northlake Mall 4800 Briarcliff Rd, NE Atlanta, GA 30345	12 p.m. - 4 p.m. (10:30 a.m. set-up)

2024 General/Special Election

KEY DATES

August 19 - December 3



DeKalb County
GEORGIA

Aug. 19	First day to request an absentee ballot for the November General/Special Election
Oct. 7	Last day to register to vote for the November General/Special Election
Oct. 15 – Nov. 1	Advance Voting period for the November General/Special Election
Oct. 19 & Oct. 26	Saturday voting for the November General/Special Election
Oct. 20 & Oct. 27	Sunday voting for the November General/Special Election
Oct. 25	Last day to request an absentee ballot for the November General/Special Election
Nov. 5	General/Special Election Day
Nov. 25 – Nov. 27	Advance Voting period for December General/Special Runoff <i>(if needed)</i>
Dec. 3	General/Special Runoff Election Day <i>(if needed)</i>

Advance Voting for the 2024 General/Special and Runoff Elections *(if needed)*

Monday – Friday
Oct. 15* – Nov. 1
7 a.m. – 7 p.m.

Saturday
Oct. 19 & 26
9 a.m. – 7 p.m.

Sunday
Oct. 20 & 27
12 p.m. – 5 p.m.

Monday – Wednesday
Nov. 25 – Nov. 27
7 a.m. – 7 p.m.

(*First day moved to Tuesday, Oct. 15, due to Monday's observed state holiday)

4 "I VOTED" 2020 STICKER 2 CHALLENGE

Design DeKalb County's New "I Voted" Sticker!

Grand Prize **\$500**
1st Runner-up \$200
2nd Runner-up \$100



For more info, including
how to submit a design,
scan QR Code or visit
DeKalbVotes.com

The sticker design challenge is
open to 11th and 12th graders
currently enrolled in DeKalb
County schools.

Deadline to Submit

Sept. 16



2024 General/Special Election
ADVANCE VOTING
October 15 – November 1



Advance Voting Dates for the General/Special Election are:
Monday – Friday (Oct. 15* – Nov. 1), 7 a.m. – 7 p.m.
Saturday (Oct. 19 & Oct. 26), 9 a.m. – 7 p.m.
Sunday (Oct. 20 & Oct. 27), 12 p.m. – 5 p.m.

(*First day moved to Tuesday, Oct. 15, due to Monday's observed state holiday)

Berean Christian Church

2201 Young Road, Stone Mountain, GA 30088

Bessie Branham Recreation Center

2051 Delano Drive, NE, Atlanta, GA 30317

Beulah Missionary Baptist Church

2340 Clifton Springs Road, Decatur, GA 30034

Briarwood Recreation Center*

2235 Briarwood Way, NE, Brookhaven, GA 30319

Clarkston Library

951 N. Indian Creek Drive, Clarkston, GA 30021

County Line–Ellenwood Library

4331 River Road, Ellenwood, GA 30294

DeKalb Voter Registration & Elections Office

4380 Memorial Drive, Suite 500, Decatur, GA 30032

Dunwoody Library*

5339 Chamblee Dunwoody Road, Dunwoody, GA 30338

Emory University

1599 Clifton Road, Atlanta, GA 30322

Greater Piney Grove Baptist Church

1879 Glenwood Avenue, SE, Atlanta, GA 30316

Hairston Crossing Library

4911 Redan Road, Stone Mountain, GA 30088

Lynwood Recreation Center

3360 Osborne Rd, NE, Brookhaven, GA 30319

New Bethel AME Church

8350 Rockbridge Road, SW, Lithonia, GA 30058

New Life Community Alliance*

3592 Flat Shoals Road, Decatur, GA 30034

North DeKalb Senior Center

3393 Malone Drive, Chamblee, GA 30341

Salem-Panola Library

5137 Salem Road, Lithonia, GA 30038

Stonecrest-Former Sam's Club*

2994 Turner Hill Rd, Stonecrest, GA 30038

Tucker–Reid H. Cofer Library*

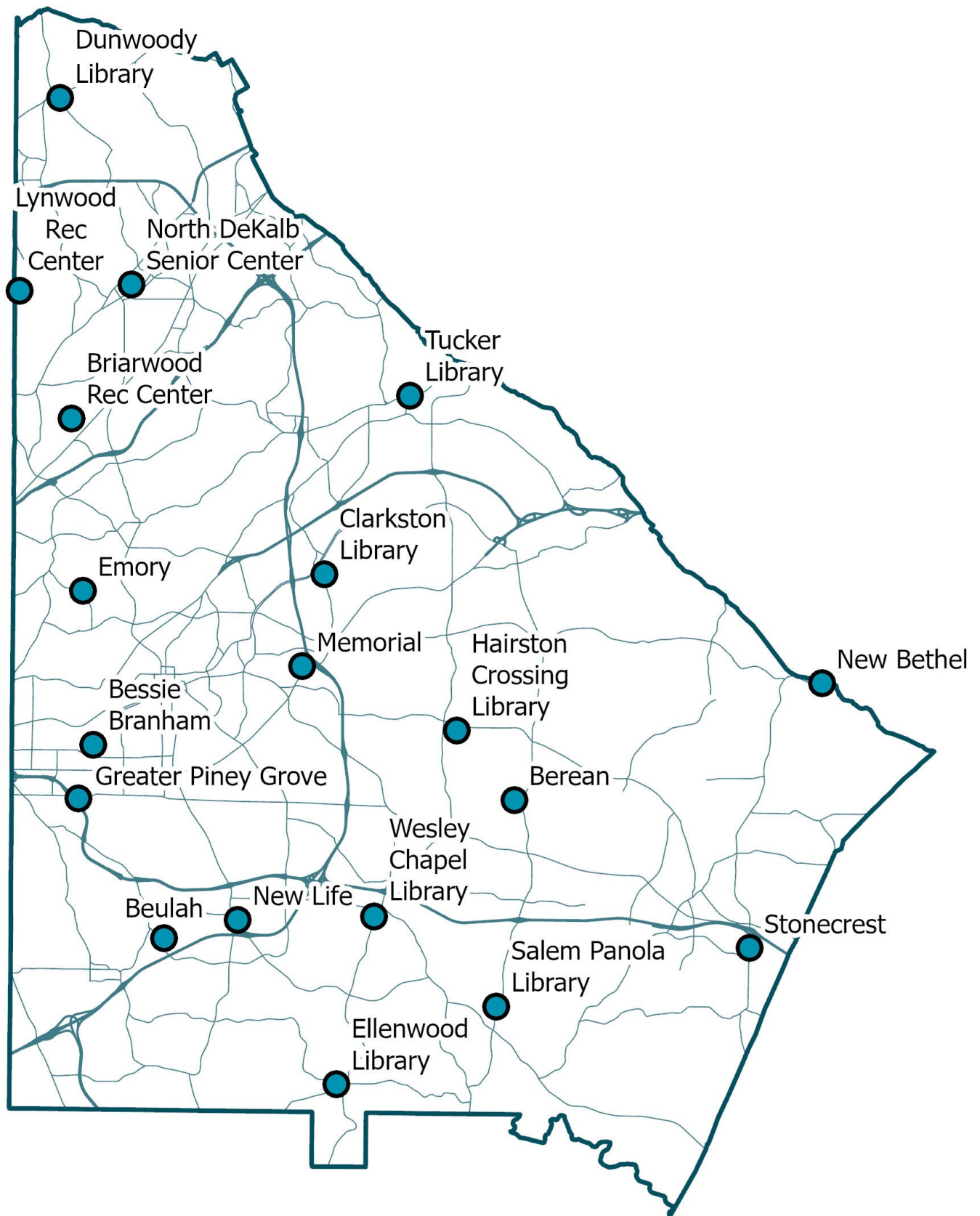
5234 Lavista Road, Tucker, GA 30084

Wesley Chapel–William C. Brown Library

2861 Wesley Chapel Road, Decatur, GA 30034

*** = Drop Box Locations**

During the designated Advance Voting period, registered voters can vote at any of DeKalb County's Advance Voting locations. For more information, visit dekalbvotes.com or call 404-298-4020.



DeKalb County GIS Disclaimer

The maps and data contained on DeKalb County's Geographic Information System (GIS) are subject to constant change. While DeKalb County strives to provide accurate and up-to-date information, the information is provided "as is" without warranty, representation or guarantee of any kind as to the content, sequence, accuracy, timeliness or completeness of any of the database information provided herein. DeKalb County explicitly disclaims all representations and warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. In no event shall DeKalb County be liable for any special, indirect, or consequential damages whatsoever resulting from loss of use, data, or profits, whether in an action of contract, negligence, or other actions, arising out of or in connection with the use of the maps and/or data herein provided. The maps and data are for illustration purposes only and should not be relied upon for any reason. The maps and data are not suitable for site-specific decision-making nor should it be construed or used as a legal description. The areas depicted by maps and data are approximate, and are not necessarily accurate to surveying or engineering standards.

A RESOLUTION OF THE DEKALB COUNTY BOARD OF REGISTRATION AND ELECTIONS RELATING TO THE SCHEDULING OF VOTER CHALLENGES RECEIVED LESS THAN NINETY DAYS PRIOR TO THE DATE OF A PRIMARY OR GENERAL ELECTION

WHEREAS, in 1993 the United States Congress passed the National Voter Registration Act (NVRA), codified at 52 U.S.C.A. § 20501 et seq., for the purpose of protecting voting rights and regulating voting registration procedures; and

WHEREAS, the Georgia Election Code, O.C.G.A. § 21-2-1, et seq., regulates elections and voter registration in the State of Georgia; and

WHEREAS, Georgia law, specifically O.C.G.A. §§ 21-2-229 and 21-2-230, allow electors to file voter challenges and dictates the procedures with which they are assessed; and

WHEREAS, it is the responsibility of county Boards of Registrars to assess voter challenges filed pursuant to these provisions; and

WHEREAS, the DeKalb County Board of Registration and Elections was established by the Georgia General Assembly pursuant to Georgia Laws 2003, p. 4200, § 1 and O.C.G.A. § 21-2-40, and is responsible for voter registration and the conduct of elections in DeKalb County; and

WHEREAS, the State of Georgia and county Boards of Registrars, including the DeKalb County Board of Registration and Elections, are subject to the provisions of the NVRA; and

WHEREAS, the NVRA specifically prohibits the State of Georgia or a county Board of Registrars from conducting any program to systematically remove the names of ineligible voters from the official lists of eligible voters within ninety (90) days of the date of a primary or general election;

NOW, THEREFORE, BE IT RESOLVED, that the DeKalb County Board of Registration and Elections finds that voter challenges made pursuant to O.C.G.A. § 21-2-229 and O.C.G.A. § 21-2-230 within ninety (90) days of the date of a primary or general election are “a program of systematic removal”, as prohibited by the National Voter Registration Act (“NVRA”), where the challenges:

1. Do not rely upon individualized information or investigation to determine the validity of the individual challenges; or
2. Use a mass computerized data-matching process to compare the voter rolls with other state and federal databases; or
3. Lack unique identifiers, indicia of reliability, or evidence of authenticity; or
4. Lack reliable first-hand evidence specific to individual voters.

BE IT FURTHER RESOLVED, that the DeKalb County Board of Registration and Elections directs the Executive Director of the DeKalb County Department of Voter Registration and Elections to:

1. Review, in consultation with the DeKalb County Attorney or her staff, all voter challenges received pursuant to O.C.G.A. § 21-2-229 and O.C.G.A. § 21-2-230 for compliance with all applicable Federal, State, and Local laws, including the NVRA and Georgia Election Code;
2. Determine if each voter challenge meets the criteria of a program of systematic removal as described above;
3. For O.C.G.A. § 21-2-229 challenges that the Executive Director has determined meet the criteria for a program of systematic removal, schedule, in consultation with the Board of Registration and Elections, a hearing as soon as practicable, and in accordance with law, after the certification of the primary or general election and any required run-off election;
4. For O.C.G.A. § 21-2-230 challenges that the Executive Director has determined meet the criteria for a program of systematic removal, schedule, in consultation with the Board of Registration and Elections, a hearing to determine probable cause as soon as practicable, and in accordance with law, after the certification of the primary or general election and any required run-off election;
5. Report to the Board of Registration and Elections all received and pending systematic voter challenges at the regularly scheduled meetings of the Board; and
6. Post the date of receipt and name of all systematic voter challenges described in this Resolution on the voter registration and election website and when each such challenge is scheduled, update the website to advise the public of the date, time and place of the hearing for each such challenge received.

ADOPTED by the DeKalb County Board of Registration and Elections, this ____ day of ____, 2024.

KARLI SWIFT
 Chair
 Board of Registration and Elections
 DeKalb County, Georgia

APPROVED AS TO FORM:

VIVIANE H. ERNSTES
 County Attorney
 DeKalb County, Georgia

DeKalb County Board of Registrations and Elections

**Procedures for Responding to Voter Challenges
Submitted Pursuant to O.C.G.A. § 21-2-229**

1. **These procedures are intended to work in tandem with, and be consistent with federal law, including the National Voter Registration Act, 52 U.S.C.A. § 20501 et seq. (“NVRA”), and the Georgia Election Code, O.C.G.A. § 21-2-1, et seq. The DeKalb County Board of Registrations and Elections’ (“BRE”) disposition of voter challenges shall comply with the NVRA, including its requirements that any activity to ensure maintenance of an accurate and current voter registration roll shall be uniform and nondiscriminatory.**

2. To the extent that any state law conflicts with federal law, federal law shall control. To the extent any procedure herein conflicts with federal or state law, the statutes shall control.

3. Challenges to the qualifications of a Dekalb County registered voter to remain on the voter registration list under O.C.G.A. § 21-2-229 may be made only by a registered voter of DeKalb County. Challenges may not be made by voters who are not registered in the same county or municipality as the challenged voter or by private entities, businesses, political committees, PAC, political parties, or other organizations. Therefore, before acting upon a challenge submitted to the BRE, staff must determine whether the challenger is an individual elector and registered to vote in DeKalb County and, if not, the BRE must reject the challenge on this basis.

4. Challenges to the (1) qualifications of a person applying to register to vote in DeKalb County or municipality therein or (2) qualifications of any elector of DeKalb County or municipality therein whose name appears on the list of electors made within 45 days of a primary, run-off primary, election or run-off election shall be postponed until the certification of such primary, election or runoff is completed. Therefore, before acting upon a challenge submitted to the BRE, staff must determine whether the challenge is made within 45 days of a primary, primary run-off, election, or run-off, and if it is, the BRE shall postpone the challenge until after certification of said election on this basis.

5. Upon receiving a written challenge to a voter’s eligibility based upon the allegation that he or she does not reside in DeKalb County or in one of its municipalities, the BRE shall require the challenger, under the authority of O.C.G.A. §21-2-229(a), to specify whether the challenge is based on the challenged voter’s current residency status or the voter’s residency status at the time the voter initially registered. The BRE shall inform the challenger of this requirement pursuant to written notice to the challenger at the address provided in the written challenge. A copy of these procedures shall be included with the notice.

6. The BRE shall not remove any voters from the DeKalb County voter registration list solely based on a challenge alleging that the voter failed to vote, except that nothing shall prohibit the BRE from removing voters after sending the voter a confirmation notice and waiting two federal election cycles for the voter to either vote or respond to the confirmation notice or as set forth in the NVRA and paragraph 6.

7. The BRE shall not remove any voters from the DeKalb County voter registration list based on a challenge alleging that they were properly registered to vote in DeKalb County at the time of initial registration but may have moved from the address listed in their voter registration file. The sole procedure to be followed in this circumstance is to send the voter a confirmation notice and wait two federal election cycles for the voter to either vote or update his or her information before removing him or her from the rolls as outlined under Section 8(d) of the NVRA. If the challenger fails to affirmatively state in writing that the challenge is based upon the challenged voter's residency status at the time the voter initially registered to vote, the BRE shall follow the following protocols:

- (a) If such written notice to the challenged voter is returned marked "undeliverable" by the United States Postal Service, the BRE shall send the challenged voter a confirmation notice pursuant to O.C.G.A. § 21-2-234(b).
- (b) If no response to the BRE's written notice of challenge is received from the challenged voter, the BRE shall inform the challenger that the challenge does not present grounds to contest the eligibility of the voter to remain on the DeKalb County voter list and no further action shall be taken on the challenge.
- (c) If the challenged voter responds to the written notice with a written confirmation of a change of address, the BRE shall update the voter's record to reflect such change, including the removal of such voter from the active voter list if such written confirmation from the challenged voter reflects that such voter is no longer qualified to vote in DeKalb County.

8. If the challenger affirmatively states that the challenge is based upon the challenged voter's residency status at the time the challenged voter initially registered to vote, or that the challenge is based on grounds other than the challenged voter's residency status, the BRE shall send within (10) business days of receipt of the challenge written notice via certified mail, return receipt requested, to the challenged voter of the challenge at the registered address of the challenged voter, and provide the challenged voter with a copy of the challenge, a copy of these procedures, and the opportunity to provide information in response to the challenge. If possible, the challenged voter shall provide information in response to the challenge within ten (10) business days from the date of the notice; however, nothing in these procedures shall prevent the challenged voter from providing information in response to the challenge leading up to and during any hearing.

9. If the voter supplied a phone number or email address on the registration form or in other writings such as an absentee ballot application received by the BRE, then in addition to the notice provided for in Paragraph 4 above, as soon as possible after receiving the challenge, the BRE will make at least three reasonable attempts, including at least one attempt during non-traditional working hours, to call or email the challenged voter to determine if the issue raised by the challenge can be resolved quickly, efficiently, and informally.

10. If the BRE determines that a hearing on the challenge is necessary, the BRE shall attempt to find a mutually convenient time for the BRE to hold any hearing.

11. Pursuant to O.C.G.A. § 21-2-229, and in addition to the above efforts, the BRE will send a written notice informing the challenged voter and the challenger of the date, time, and place of the hearing along with a copy of the challenge, which hearing shall be set no later than ten (10) days following service of the notice, and shall state that either party may, but is not required to, be represented by counsel or another representative at the hearing. The notice will be sent by email (if available) and certified mail, return receipt requested, first-class mail, or in the manner provided in O.C.G.A. § 21-2-228(c). The notice must be mailed sufficiently in advance of the hearing to provide the person being challenged at least five days' notice of the date, time, and place of the hearing.

12. The challenged voter will have the right to at least one continuance of the hearing date upon request and may be granted additional continuances for good cause shown.

13. The written challenge will be posted on the BRE website within three business days of receipt of the challenge by the BRE.

14. O.C.G.A. § 21-2-229(a) requires that a challenge "be in writing and specify distinctly the grounds of the challenge." Challenges that are not in writing or which consist of vague, generalized, speculative assertions or conjecture do not satisfy this standard and must be rejected. In particular, residency-based challenges must allege facts sufficient to specifically and distinctly identify the grounds for the challenger's contention that a registered voter has not satisfied the residency requirements of O.C.G.A. § 21-2-217.

15. Under O.C.G.A. § 21-2-229(c), the challenger bears the burden of proving the challenged voter is not qualified to remain on the registration list. Because O.C.G.A. § 21-2-217(b) gives presumptive effect to the registrar's decision in determining the residence of the challenged voter at the time the registration application is considered, challengers bringing residency-based challenges must produce evidence sufficient to rebut this presumption in order to sustain their burden of proving that the challenged voter is not qualified to remain on the rolls. If the challenger fails to do so, the challenge fails and it must be rejected by the BRE pursuant to O.C.G.A. § 21-2-229(c) and 21-2-217(b).

16. Examples of challenges that would fail to meet the minimum standards required by Section 21-2-229(a) include, but are not limited to:

(a) Non-individualized or generalized claims (e.g., challenges to everyone registered at a certain address);

(b) Assertions that a challenged voter's name is not affiliated with the address of registration in any governmental database. For instance, challenges based on the allegation that the voter's name is not associated with the utility bill for an address as the sole basis for challenge are insufficient because there could be many residents at a particular address who do not pay the utility company;

(c) “Voter caging” challenges—blanket challenges to large numbers of people living in certain neighborhoods—shall be rejected if they fail to specify distinctly the basis for the challenge to each voter’s qualifications.

17. In considering the evidence presented in support of or in opposition to a challenge based upon a change of residence, the BRE shall not rely exclusively upon address data on file with the Georgia Department of Driver Services (“DDS”) or other government databases, because voters often fail to immediately notify all government entities about address changes and, even if they do, there are often lag times before the government entity updates its files.

18. Where a voter is a legal resident of DeKalb County and otherwise qualified to vote within the meaning of O.C.G.A. §§ 21-2-216 and 21-2-217, the BRE shall not remove such individual from the voter roll on the basis that the voter faces challenges causing them to live on the streets or in shelters, vehicles, trailers, transitional housing, non-traditional housing or at businesses serving homeless, ill, displaced, economically challenged or other DeKalb County residents in need of housing assistance in the county.¹ When adjudicating such challenges, the BRE shall consider the particular circumstances of the voter and the fact that the burden of proof is on the elector who brought the challenge to prove ineligibility.

19. Pursuant to O.C.G.A. § 21-2-229, the BRE will notify challenged voters, in writing by first class, forwardable mail, and by telephone and email (if available), of any change in registration status resulting from challenge proceedings. This notification letter will specify in detail any basis for upholding the challenge.

20. Any notice sent to challenged voters indicating that the BRE has upheld a challenge will include a voter registration form and shall inform the voter that they have a right to appeal the decision by filing a petition with the clerk of the superior court within ten days after the date of the decision of the registrars and that such petition must be served upon the other parties to the challenge and the registrars. The notice shall also include contact information for the other parties to the challenge and the registrars to effectuate such service.

21. A copy of each written challenge upon which the BRE acts will be appended to the Minutes of the BRE meeting at which the action was taken.

22. Pursuant to the NVRA, the BRE shall not complete any activity with the purpose of systematically removing ineligible voters from the list of electors within 90 days prior to the date of a primary or general election for Federal office. This rule shall generally not preclude removal where a voter voluntarily requests removal or there is individualized evidence that a voter is deceased, convicted of a felony, or adjudicated mentally incapacitated without the right to vote.

23. The procedures set forth herein shall apply to challenges to voter qualifications initiated pursuant to O.C.G.A. §§ 21-2-228 and 21-2-229.

¹ Note that this is a non-exclusive list of possible alternative locations where DeKalb County’s eligible voters may be living in the county.

24. The BRE will not remove any voter from the registration lists based on residency issues raised by rejected challenges. No state law will be construed to permit removals based on rejected challenges or residency issues raised by rejected challenges.

25. If any members of the BRE or employees or agents of the DeKalb County Department of Voter Registration and Elections challenge the eligibility of voters in their individual capacity while they remain in that position or have a personal or business interest in the mounting of such a challenge, they must recuse themselves from deliberating, voting or otherwise participating in any way in the BRE's consideration of such challenges.

26. The BRE will process all voter challenges expeditiously and objectively, while erring in all instances on the side of preserving the voter's right to remain on the registration lists, in recognition of the statutory requirement that the challenger has the burden of proving ineligibility.

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DeKalb County Board of Registrations and Elections

**Procedures for Responding to Voter Challenges
Submitted Pursuant to O.C.G.A. § 21-2-230**

1. **These procedures are intended to work in tandem with, and be consistent with federal law, including the National Voter Registration Act, 52 U.S.C.A. § 20501 et seq. (“NVRA”), and the Georgia Election Code, O.C.G.A. § 21-2-1, et seq. The DeKalb County Board of Registrations and Elections’ (“BRE”) disposition of voter challenges shall comply with the NVRA, including its requirements that any activity to ensure maintenance of an accurate and current voter registration roll shall be uniform and nondiscriminatory.**
2. To the extent that any state law conflicts with federal law, federal law shall control. To the extent any procedure herein conflicts with federal or state law, the statutes shall control.
3. Challenges to the right of a Dekalb County registered voter to vote in an election under O.C.G.A. § 21-2-230 must be in writing, must specify distinctly the grounds of such challenge, and must be filed with the BRE, in its capacity as registrar. Challenges that are not in writing or which consist of vague, generalized, speculative assertions or conjecture do not satisfy this standard and must be rejected.
4. Challenges to the right of a Dekalb County registered voter to vote in an election under O.C.G.A. § 21-2-230 may be made only by a registered voter of DeKalb County. Challenges may not be made by voters who are not registered in the same county or municipality as the challenged voter or by private entities, businesses, political committees, PAC, political parties, or other organizations. Therefore, before acting upon a challenge submitted to the BRE, staff must determine whether the challenger is an individual elector and registered to vote in DeKalb County and, if not, the BRE must reject the challenge on this basis.
5. Challenges to the right of a Dekalb County registered voter to vote in an election under O.C.G.A. § 21-2-230 made within 45 days of a primary, run-off primary, election or run-off election shall be postponed until the certification of such primary, election or runoff is completed. Therefore, before acting upon a challenge submitted to the BRE, staff must determine whether the challenge is made within 45 days of a primary, primary run-off, election, or run-off, and if it is, the BRE shall postpone the challenge until after certification of said election on this basis.
6. If the challenge is made by a registered voter of DeKalb County and timely, the BRE should be prepared to convene a meeting to determine probable cause immediately upon receipt of a challenge under § 21-2-230.
7. The written challenge will be posted on the BRE website within three business days of receipt of the challenge by the BRE.

8. The challenger has the burden of proof to present probative and individualized evidence sufficient to meet the probable cause standard that the challenged voter does not have the right to vote in an election.

9. In determining whether there is probable cause to uphold a challenge, the BRE must consider whether there are facts and circumstances set forth in the written challenge which creates a reasonable belief that the challenged voter may not be qualified to vote in an election. The law provides several categories of probable causes, which shall include, but is not limited to:

- a. An elector who is deceased;
- b. An elector voting or registering to vote in a different jurisdiction;
- c. An elector obtaining a homestead exemption in a different jurisdiction; and
- d. An elector being registered at a nonresidential address as confirmed or listed by or in a government office, data base, website, or publicly available sources derived solely from such governmental sources.

The challenger shall still, however, put forward reliable and probative evidence to support a claim that the challenged voter falls within these enumerated “probable cause” categories.

10. Examples of challenges that would fail to meet the minimum standards required by Section 21-2-230 include, but are not limited to:

- a. Non-individualized or generalized claims;
- b. The presence of a challenged voter’s name on the National Change of Address database as having changed the voter’s residence to a different jurisdiction without additional evidence indicating the voter lost his or her residence; and
- c. Challenges to voters alleged to have gained or lost their residency due to (1) a presence or absence while enrolled as a student at any college, university or other institution of learning in Georgia, (2) being stationed on duty in this state as a member of the armed forces of the United States; and (3) moving to a federal territory, another state, or foreign country to engage in government service.

11. O.C.G.A. § 21-2-217(b) gives presumptive effect to the BRE’s decision in determining the residence of the challenged voter at the time the registration application is considered. Challengers bringing residency-based challenges must overcome this presumption.

12. Where a voter is a legal resident of DeKalb County and otherwise qualified to vote within the meaning of O.C.G.A. §§ 21-2-216 and 21-2-217, the BRE shall not sustain a challenge on the basis that the voter currently lives on the streets or in shelters, vehicles, trailers, transitional

housing, non-traditional housing or at businesses serving homeless, ill, displaced, economically challenged or other DeKalb County residents in need of housing assistance in the county.¹ When adjudicating such challenges, the BRE shall consider the particular circumstances of the voter and the fact that the burden of proof is on the voter who brought the challenge to prove ineligibility.

13. If the BRE does not find probable cause, then the challenge shall be denied.

14. If the BRE finds probable cause exists to uphold the challenge, the BRE shall proceed as set forth below.

Where Probable Cause is Found:

15. Where probable cause is found, the BRE must provide the list of the challenged voters, with the basis of the challenges noted thereon, to the poll officers at the challenged voters' precincts and advance voting locations, and to the absentee ballot clerk.

16. Where a hearing is scheduled pursuant to the procedures below, staff shall notify the challenged voter of the challenge and both the challenger and challenged voter of the hearing date via certified mail, regular U.S. mail, e-mail, and telephone (if available) as soon as possible after scheduling said hearing and no later than three business days prior to the hearing, where possible

17. If the challenged voter (1) submits a timely absentee ballot or (2) appears to vote in person after the BRE has determined that probable cause exists, and it is practical to conduct a hearing on the challenge prior to the close of the polls, that hearing will dictate whether the voter can vote in the election.

- a. If the challenge is denied, the voter shall be permitted to vote. An in-person voter shall be permitted to vote notwithstanding the fact the polls may have closed prior to the time the registrars render a decision, as long as the voter proceeds to vote immediately after the registrars' decision.
- b. If the challenge is upheld, the voter shall not be permitted to vote. If the challenge is based on the grounds that the voter shall not be permitted to remain on the list of electors, the challenged voter's name shall be removed.

18. If the challenged voter (1) submits a timely absentee ballot or (2) appears to vote in person after the BRE has determined that probable cause exists, and it is not practical to conduct a hearing on the challenge prior to the close of the polls, the challenged voter must be permitted to vote by casting a challenged ballot, with the ballot then sealed in double envelopes.

- a. For an absentee ballot, the absentee ballot clerk receiving the sealed ballot must write the word "Challenged," the voter's name, and the alleged cause

¹ Note that this is a non-exclusive list of possible alternative locations where DeKalb County's eligible voters may be living in the county.

of the challenge on the back of the outer envelope. The ballot should then be deposited into a secure, sealed ballot box.²

- b. For an in-person ballot, the challenged voter may cast a challenged ballot on the same type of ballot that is used for provisional ballots. The poll worker must write the word “Challenged,” the voter's name, and the alleged cause of the challenge on the back of the outer envelope. The challenged voter should then be directed to deposit the ballot into a secure, sealed ballot box.

19. If the challenge is based on grounds other than the challenged voter’s right to remain on the electors’ list, no further action by the BRE is required, and the challenged vote will be counted as valid but may be voided in the event of an election contest.

20. If the challenge is based on the challenged voter’s right to remain on the electors’ list, the BRE must complete the challenge hearing before the deadline for certification of the election results. If the BRE upholds the challenge, the name of the challenged voter must be removed from the list of electors and the ballot of the challenged voter must be rejected and not counted. Challenges to a voter’s right to remain on the list of electors must be conducted pursuant to the BRE’s adopted Procedures for Responding to Voter Challenges Submitted Pursuant to O.C.G.A. § 21-2-229, with the exception of timing.

21. The procedures set forth herein shall apply to challenges to voter qualifications initiated pursuant to O.C.G.A. § 21-2-230.

22. Any challenge of a voter that occurs during a primary or general election shall continue through the run-off primary or run-off election of such primary or general election unless resolved.

23. A copy of each written challenge upon which the BRE acts will be appended to the Minutes of the BRE meeting at which the action was taken.

24. If any members of the BRE or employees or agents of the DeKalb County Department of Voter Registration and Elections challenge the eligibility of voters in their individual capacity while they remain in that position or have a personal or business interest in the mounting of such a challenge, they must recuse themselves from deliberating, voting or otherwise participating in any way in the BRE’s consideration of such challenges.

25. The BRE will process all voter challenges expeditiously and objectively, while erring in all instances on the side of preserving the voter’s right to vote in an election, in recognition of the statutory requirement that the challenger has the burden of proving ineligibility.

² See O.C.G.A. § 21-2-386(e) for absentee ballots cast during advance voting.

Exhibit 2

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Voter Registration List Maintenance: Guidance under Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507

Published September 2024

Federal law imposes important limits on the rules and procedures States may adopt regarding their voter registration lists. The National Voter Registration Act of 1993 (also known as the “NVRA” or “motor voter law”), for one, sets forth certain voter registration requirements for federal elections. Section 8 of the NVRA, 52 U.S.C. § 20507, addresses the administration of voter registration by States and requires procedures to maintain accurate and current voter registration lists. These requirements govern, among other issues:

- The date by which valid voter registration applications must be accepted and eligible persons registered,
- Changes in a registrant’s address information,
- Limits on removal of names from the voter registration list, and
- Administration of a uniform, nondiscriminatory voter registration list maintenance program that complies with the Voting Rights Act (VRA”).¹

This guidance addresses one aspect of maintaining a voter registration list: when and how jurisdictions may remove voters from their voter lists. This guidance does not impose legal obligations and is not intended to be comprehensive. Rather, it is intended only to aid jurisdictions as they comply with existing obligations under Section 8 in three areas:

- List Maintenance
- Restrictions on List Maintenance
- Special Rules for Changes of Address

¹ The NVRA applies to 44 States and the District of Columbia. Six States (Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming) are exempt from the NVRA because, on and after August 1, 1994, they either had no voter-registration requirements or had election-day voter registration at polling places with respect to elections for federal office. Likewise, the territories are not covered by the NVRA (Puerto Rico, Guam, Virgin Islands, American Samoa). While the NVRA applies to elections for federal office, most States have extended its procedures to all elections.



List Maintenance

Section 8(a)(4) of the NVRA sets forth steps that States must follow concerning general voter registration list maintenance programs that make a reasonable effort to remove from the voter rolls people who are ineligible by reason of death or change in residence to a location outside the jurisdiction. A State's voter registration list maintenance program must comply with procedures in the NVRA.

To conduct a general program that makes a reasonable effort to remove voters who are ineligible due to a change in residence, States can follow the "safe harbor" procedure in Section 8(c)(1) of the NVRA. That procedure allows use of change-of-address information supplied by the United States Postal Service through its National Change of Address program (NCOA) to identify registrants who may have changed residences. Once a State has identified such individuals, it may take one of two actions:

1. If the NCOA information indicates that the person has moved to a different residence in the same registrar's jurisdiction, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid, pre-addressed return form; the registrant can use to verify or correct the address information; or
2. If the NCOA information indicates that the registrant has moved to a residence outside the registrar's jurisdiction, the registrar may remove the registrant from the voter rolls after satisfying all requirements of the Section 8(d) notice process described below.

States do not have to use the NCOA process. They have discretion under the NVRA in designing their general program, subject to the limitations described below.

Restrictions on List Maintenance

The NVRA also limits whether, when, and how a State can remove a person's name from the rolls. States can remove the name of a person from the voter registration rolls when the registrant requests it, and, if State law so provides, for mental incapacity or criminal conviction. States can also remove ineligible persons from the voter rolls because the person has died or changed their



residence to a place outside the jurisdiction. Finally, States can remove people who were ineligible or improperly registered in the first instance.

Removal at the Request of the Registrant

A “removal at the request of the registrant” under the NVRA requires first-hand action by a registrant: (1) asking to remove their name from the voting registration list; (2) completing and returning a notice card indicating an address change outside the jurisdiction; or (3) submitting a new application registering to vote a second time in a new jurisdiction and providing information regarding the registrant’s prior voter registration address on the new application, which the State can treat as a request to cancel or transfer their prior registration.

Information submitted by a third party does not constitute a “removal at the request of the registrant.” When a registrant provides notice of a new address within the same jurisdiction, or registers to vote a second time at a new address within the same jurisdiction, the State should update the original registration, rather than cancel it.

Discrimination, Intimidation, Threats, and Coercion

Under Section 8(b) of the NVRA, a State’s list maintenance program must be uniform, nondiscriminatory, and consistent with the VRA. Section 2 of the VRA, 52 U.S.C. § 10301, prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in a language minority group. Section 11(b) of the VRA, 52 U.S.C. § 10307(b), also prohibits any conduct that attempts to, or actually would, intimidate, threaten, or coerce a reasonable voter.

Examples of list maintenance activities that may violate the NVRA include comparing voter files to outdated or inaccurate records or databases, taking action that erroneously affects a particular class of voters (such as newly naturalized citizens), or matching records based solely on first name, last name, and date of birth. **The prohibitions of the NVRA extend to any list maintenance activity based on third-party submissions.**

The 90-Day Quiet Period Before Federal Elections

The NVRA limits when States can conduct a general list maintenance program. Under Section 8(c)(2), **States must complete any program that systematically removes the names of ineligible voters from the official list of eligible voters no later than 90 days before a**



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primary election or general election for federal office. In other words, once an election for federal office is less than 90 days away, processing and removals based on systematic list maintenance must cease. And, if a State's federal primary election occurs less than 90 days before a federal general election, the State must complete any systematic-removal program based on change of address for the federal election cycle no later than 90 days prior to the federal primary election: no further systemic activity may take place between the primary and general elections.

This 90-day deadline applies to State list maintenance verification activities such as general mailings and door-to-door canvasses. **This deadline also applies to list maintenance programs based on third-party challenges derived from any large, computerized data-matching process.** However, the 90-day deadline does not preclude removal of a registrant's name at the request of that registrant, removal due to the death of the registrant, or removal due to a criminal conviction or mental incapacity of the registrant as provided by State law, nor does the deadline preclude the correction of a registrant's information. 52 U.S.C. § 20507(c)(2)(B).

Special Rules for Changes of Address

Section 8(b) of the NVRA prohibits removing registrants from the voter registration list solely because of a failure to vote. However, States may **initiate** the process of determining whether a voter has changed residence to outside of the jurisdiction based on information showing that a voter has not voted in elections nor communicated with a registrar over an extended period.

Section 8(d) of the NVRA prescribes additional rules for a State seeking to remove a person from the voting rolls based on a change of residence, regardless of the voters' participation in prior elections. Specifically, a State may remove a person from the voter registration list due to a change in residence *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).

Confirmation in writing means confirmation by the voter, such as a notice card completed and returned by the voter. **A third-party submission—such as a submission of another individual's information via an online portal or a challenge based solely on public database information—is *not* confirmation by the registrant of a change of address.** In the



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absence of a written confirmation from a registrant of a change of address outside the jurisdiction, Section 8(d) of the NVRA sets forth a process for removing a person based on a change of residence. 52 U.S.C. § 20507(d)(2). This process requires sending a forwardable notice, in the form of a postage-prepaid and pre-addressed return card, on which the person may state their current address. The notice must include the language required by Section 8(d)(2) of the NVRA. If the registrant did not change their residence, or changed residence but remained in the registrar's jurisdiction, the notice must advise that:

1. The registrant should complete and return the card no later than the voter registration deadline for the next election;
2. If the card is not returned, the registrant may need to affirm or confirm their address before being permitted to vote in a federal election from the date of the notice to the day after the second general election for Federal office that occurs after the date of the notice; and
3. If the registrant does not vote in an election during that period, the registrant's name will be removed from the list of eligible voters.

Id. § 20507(d)(2)(A). If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, the notice must provide information concerning how the registrant can continue to be eligible to vote. *Id.* § 20507(d)(2)(B).

Any political subdivision covered by Section 203 of the VRA, 52 U.S.C. § 10503, must provide such notices in the language of the applicable minority group as well as in English, unless the language of the applicable minority group is oral or unwritten (or in the case of Alaska natives and American Indians, if the predominant language is historically unwritten). *See id.* § 10503(c). The jurisdiction may designate the registrant as inactive if the registrant fails to return the card by the voter registration deadline for the next election after the notice is sent.

The jurisdiction may remove the registrant from the voter rolls after sending the notice *only* in one of two circumstances. First, if the registrant confirms in writing, such as by completing and returning the notice card, that the registrant has changed residence to a place outside the jurisdiction, then the registrant can be removed from the list immediately. Second, if the registrant fails to respond to the notice and fails to vote or to appear to vote in an election from the date the notice is sent to the day after the second federal general election after the notice is sent, then the registrant can be removed from the list after that second federal general election.



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Section 8(f) of the NVRA establishes that if a voter changes address to another address within the registrar's same jurisdiction, the registrar must update the voter's registration to reflect the new address, and the voter may not be removed based on this change, except as otherwise provided in Section 8(d). A "registrar's jurisdiction" in this context means (1) an incorporated city, town, borough, or other form of municipality; or (2) a geographic area larger than a municipality or a geographic area of consolidated municipalities, if voter registration is maintained by such larger units of government.

For more information, please consult the Department's NVRA Questions and Answers at <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra>.

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U. S. Department of Justice
Civil Rights Division

[Justice.gov/voting](https://www.justice.gov/voting)

Exhibit 3

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

FAIR FIGHT, INC.; JOHN DOE; and
JANE DOE,

Plaintiffs,

v.

TRUE THE VOTE, INC.; CATHERINE
ENGELBRECHT; DEREK
SOMERVILLE; MARK DAVIS; MARK
WILLIAMS; RON JOHNSON; JAMES
COOPER; and JOHN DOES 1-10,

Defendants.

CIVIL ACTION FILE NO.

2:20-CV-00302-SCJ

ORDER

This matter is before the Court on Plaintiffs' Motions for a Temporary Restraining Order and/or Preliminary Injunction (Doc. No. [11]) and to Proceed Anonymously (Doc. No. [2]).¹ Defendants oppose the Motions. Doc. Nos. [21]; [22]. The Court held an evidentiary hearing via videoconference on

¹ All citations are to the electronic docket unless otherwise noted, and all page numbers are those imprinted by the Court's docketing software.

December 31, 2020. Doc. No. [25].² Following the hearing, Plaintiffs submitted further evidence (Doc. No. [26]), to which Defendants have responded (Doc. No. [27]). The Court now rules as follows.

I. BACKGROUND

Plaintiff Fair Fight, Inc. (“Fair Fight”) is a political action committee based in Georgia. Doc. No. [1], p. 5, ¶ 11. Plaintiffs John Doe and Jane Doe (“Doe Plaintiffs”), proceeding anonymously, are Georgia voters who allegedly have suffered harm from Defendants’ voter challenges, which are discussed further below. *Id.* at 7-8, ¶¶ 15-16. Defendant True the Vote, Inc. (“TTV”) is a 501(c)(3) organization that is incorporated in Texas and whose stated purpose is to combat voter fraud. *Id.* at 8, ¶ 17. Defendant Catherine Engelbrecht is TTV’s founder and Executive Director. *Id.* at 9, ¶ 18. The other individual Defendants are allegedly Georgia residents who have assisted with the voter challenges at issue in this lawsuit. *Id.* at 9-10, ¶¶ 19-23.

Plaintiffs filed this action on December 23, 2020, alleging that Defendants violated Section 11(b) of the Voting Rights Act of 1965, 52 U.S.C. § 10307(b)

² Due to the urgency of Plaintiffs’ request for preliminary injunctive relief, the Court is issuing this Order before the transcript to the evidentiary hearing is available. Once the transcript is prepared, it will be filed on the docket.

("Section 11(b)"), by submitting 364,541 voter challenges under O.G.C.A. § 21-2-230. Doc. No. [1], p. 14, ¶ 38; see also Doc. No. [1-1]. Georgia law permits two types of pre-election challenges to be made by electors of a county/municipality against fellow electors in the same county/municipality: (1) a challenge of the qualifications of the elector (under O.C.G.A. § 21-2-229); and (2) a challenge of the right of an elector to vote in a particular election (under O.C.G.A. § 21-2-230). See Allen v. Yost, 281 Ga. 102, 103-04, 636 S.E.2d 517, 518 (2006) (describing O.C.G.A. § 21-2-230 as "a means for an elector to challenge the qualifications of another elector prior to the election . . ."); see also Cook v. Bd. of Registrars of Randolph Cty., 291 Ga. 67, 71, 727 S.E.2d 478, 482 (2012) ("A challenge brought under O.C.G.A. § 21-2-230 involves a pre-election contest regarding a particular election – whether a voter is qualified to vote in it.").

O.C.G.A. § 21-2-229 provides in relevant part that "[a]ny elector of a county or municipality may challenge the qualifications of any person applying to register to vote in the county or municipality and may challenge the qualifications of any elector of the county or municipality whose name appears on the list of electors." In addition, § 229 provides that if the county board of registrars upholds the challenge, "the person's application for registration shall

be rejected or the person's name removed from the list of electors, as appropriate."

O.C.G.A. § 21-229(d).

O.C.G.A. § 21-2-230, on the other hand, provides that "any elector of the county or municipality may challenge the right of any other elector of the county or municipality, whose name appears on the list of electors, to vote in an election."

The challenge must "be in writing and specify distinctly the grounds of such challenge." O.C.G.A. § 21-2-230(a). "Upon the filing of such challenge, the [county] board of registrars shall immediately consider such challenge and determine whether probable cause exists to sustain such challenge." O.C.G.A. § 21-2-230(b).

Under both § 229 and § 230, once a challenge is filed, a statutory procedure is triggered by which the Board of Registrars (in the county in which the challenge was made) must determine the eligibility of the challenged elector to vote. Both statutes also provide for notice, hearing, and appeal.

In their brief in opposition to Plaintiffs' motion for preliminary injunction, Defendants assert that Plaintiffs have "failed to recognize the differences between O.C.G.A. § 21-2-229 and § 21-2-230." Doc. No. [21], p. 2. Defendants further state that the elector challenges at issue in this litigation "were brought

under [§ 230] and only question the challenged elector's eligibility to vote in the run-off election and did not seek to have the elector removed from the registration list" Id. at p. 4.³

Plaintiffs contend that TTV has mobilized residents in every Georgia county to submit *en masse* O.G.C.A. § 21-2-230 challenges to election boards to prevent allegedly ineligible voters from voting in the January 5, 2021 Senate runoff election. See Doc. No. [1] pp. 2-3, ¶¶ 4-6. TTV purportedly has facilitated these challenges by providing the challengers with lists of Georgia voters who appear on the National Change of Address Registry ("NCOA") and thus no longer receive mail at the address associated with their voter registration. Id. at 2-3, ¶ 4.

Plaintiffs allege Defendants' activity violates Section 11(b), which makes it unlawful to harass or intimidate voters, because their activity creates a risk that challenged electors will be harassed or intimidated and may be discouraged from voting. Doc. No. [11-1], p. 19. Plaintiffs have requested this Court to enter a

³ It is worth noting that subsections (g) and (h) of § 230 provide for a challenged elector's removal from the list of electors when "the challenge is based upon grounds that the challenged elector is not qualified to remain on the list of electors." Defendants argue that they are challenging under § 230 to contest only the challenged electors' eligibility to vote in the January 5 runoff election.

Temporary Restraining Order (“TRO”) or Preliminary Injunction ordering Defendants and their aides to cease all efforts to: (1) challenge the eligibility of Georgia electors; (2) participate, recruit, train, or advertise poll-watching activities; and (3) record electors and election workers at the polls. See Doc. No. [11], pp. 1-2.

Plaintiffs have also asked this Court to allow Doe Plaintiffs to proceed anonymously based on their alleged fear of harassment if their actual identities are known. Doc. No. [2]. Through redacted declarations, Doe Plaintiffs have stated that they are Georgia voters who are temporarily residing in a different State due to work, intend to maintain Georgia as their permanent state of residence, intend to vote in Georgia, and have experienced fear from having their names published publicly as a result of Defendants’ voter challenges. See Doc. No. [26].

Defendants oppose (Doc. No. [21]) Plaintiffs’ Motion for a Temporary Restraining Order and/or Preliminary Injunction (Doc. No. [11]). Defendants argue that Plaintiffs have failed to support their request for a TRO because their Complaint is unverified and the attachments thereto—including newspaper articles and social media posts—are inadmissible as evidence. Doc. No. [21], pp.

7-10.⁴ Thus, Defendants assert, Plaintiffs have failed to show injury-in-fact or redressability for Doe Plaintiffs and thus do not have standing. Id. at 10-13. Defendants also assert that Plaintiffs have failed to show that they are entitled to a preliminary injunction. Id. at 13-25.

Finally, Defendants oppose (Doc. No. [22]) Doe Plaintiffs' Motion to Proceed Anonymously (Doc. No. [2]). While Doe Plaintiffs argue that the Court should grant this Motion "given the real threats of voter intimidation" they may experience from being associated with this lawsuit (Doc. No. [2-1], p. 1), Defendants argue that Doe Plaintiffs have failed to show the requisite privacy rights or threat of harm to justify proceeding anonymously and that fairness and public interest dictate that they should not proceed anonymously (See Doc. No. [22], pp. 3-10).

After full briefing and evidentiary hearing, this matter is now ripe for ruling.

⁴ Defendants also argued that Plaintiffs failed to provide affidavits to support their allegations concerning voter intimidation and other non-organizational-standing matters. See Doc. No. [21], p. 8. At the evidentiary hearing (Doc. No. [25]), however, Defendants agreed to consider the submission of Doe Plaintiffs' declarations, which Plaintiffs offered to submit during the hearing. Those declarations have now been filed. Doc. No. [26].

II. LEGAL STANDARD

A. Motion to Proceed Anonymously

In exceptional circumstances, a “party may proceed anonymously in federal court by establishing ‘a substantial privacy right which outweighs the customary and constitutionally-embedded presumption of openness in judicial proceedings.’” In re: Chiquita Brands Int’l, Inc., 965 F.3d 1238, 1247 (11th Cir. 2020) (quoting Plaintiff B v. Francis, 631 F.3d 1310, 1315–16 (11th Cir. 2011)). In deciding a motion to proceed anonymously, a district court should first consider three circumstances: (1) whether the movant is challenging government activity; (2) whether the movant would be compelled, absent anonymity, to disclose information of utmost intimacy; and (3) whether lack of anonymity would be against the movant’s penal interest. Id. A court must then carefully consider every circumstance of the particular case before determining whether privacy outweighs publicity. Id. Additional factors the court should consider include whether the movant is minor; whether the movant, absent anonymity, faces a real threat of physical harm; whether anonymity poses a unique threat of fundamental unfairness to the opposing party. Id. When a plaintiff shows a need for anonymity, a defendant’s “general plea for ‘openness’ is not convincing.” Id.

(quoting Plaintiff B, 631 F.3d at 1318). No factor is dispositive when conducting this analysis. Doe v. Frank, 951 F.2d 320, 323 (11th Cir. 1992). And a district court has “a zone of choice within which [it] may go either way.” In re: Chiquita Brands Int’l, Inc., 965 F.3d at 1246 (internal quotations omitted).

B. Standing

To bring a lawsuit in federal court, a plaintiff must have standing. Trichell v. Midland Credit Mgmt., Inc., 964 F.3d 990, 996 (11th Cir. 2020). To have standing, the plaintiff must show that it has suffered an injury in fact that has a causal connection to the defendant’s conduct, and which the court likely can redress with a favorable decision. Lujan v. Defs. of Wildlife, 504 U.S. 555, 561 (1992); Trichell, 964 F.3d at 996 (stating that the party invoking a federal court’s jurisdiction has the burden to establish standing). An organization may have standing under a “diversion-of-resources” theory when it must divert resources to counteract a defendant’s unlawful acts, thereby impairing the organization’s ability to engage in its typical projects. Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982); Common Cause Ind. v. Lawson, 937 F.3d 944, 952–53 (7th Cir. 2019) (listing cases finding organizational standing for voter-advocacy groups that were forced to divert resources to counteract unlawful election activity).

C. Standard for TRO and Preliminary Injunction

The Court considers four factors when deciding whether to issue a TRO or preliminary injunction pursuant to Federal Rule of Civil Procedure 65: (1) whether there is a substantial likelihood of success on the merits; (2) whether the TRO or preliminary injunction is necessary to prevent irreparable injury; (3) whether the threatened injury outweighs the harm that the TRO or preliminary injunction would cause to the non-movant; and (4) whether the TRO or preliminary injunction would be adverse to the public interest. Parker v. State Bd. of Pardons & Paroles, 275 F.3d 1032, 1034–35 (11th Cir. 2001). Injunctive relief is an extraordinary and drastic remedy and should not be granted unless the movant clearly establishes the burden of persuasion as to each of these four factors. Siegel v. LePore, 234 F.3d 1163, 1176 (11th Cir. 2000).

In addition, “[a]t the preliminary injunction stage, a district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction, if the evidence is ‘appropriate given the character and objectives of the injunctive proceeding.’” Levi Strauss & Co. v. Sunrise Int’l Trading Inc., 51 F.3d 982, 985 (11th Cir. 1995). The decision to grant preliminary

injunctive relief is within the broad discretion of the district court. Majd-Pour v. Georgiana Cmty. Hosp., Inc., 724 F.2d 901, 902 (11th Cir. 1984).

III. ANALYSIS

Before addressing the merits of Plaintiffs' Motions, the Court begins by expressing its grave concerns regarding Defendants' coordinated, broad-strokes challenge⁵ to more than 360,000 Georgia voters on the eve of an unprecedented two-seat Senate runoff.

First, the Court is extremely concerned that Defendants' actions are an attempt to circumvent the requirements of the National Voter Registration Act ("NVRA")⁶ for identifying ineligible voters. While the Court notes that Plaintiffs are not directly bringing an NVRA challenge, Defendants' argument that the NVRA is not implicated at all fails. Defendants argue that, because O.C.G.A. § 21-2-230 contemplates challenges to a voter's eligibility to vote in an election, in contrast to § 21-2-229, which contemplates challenges to a voter's registration, the

⁵ The Court recognizes that Defendant TTV did not (and could not) directly file any O.G.C.A. § 21-2-230 challenges. However, since it is uncontested that TTV encouraged, assisted, and acted in concert with the individual Defendants who did file the challenges, the Court refers to "Defendants' challenges" throughout this Order.

⁶ See 52 U.S.C. §§ 20501-20511

NVRA is not implicated. Doc. No. [21], p. 5. This argument ignores the purpose and plain language of the statutory safeguards Congress included in the NVRA.

Section 8 of the NVRA “pairs the mandate that states maintain accurate voter rolls with multiple constraints on how the states may go about doing so.” N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections, No. 1:16CV1274, 2016 WL 6581284, at *3 (M.D.N.C. Nov. 4, 2016) (citation omitted). In particular, Section 8 of the NVRA provides that “the name of a registrant *may not* be removed from the official list of eligible voters” except under certain circumstances: (1) “at the request of the registrant”; (2) “as provided by State law, by reason of criminal conviction or mental incapacity”; (3) “death of a registrant”; or (4) “a change in the residence of the registrant.” § 20507(a)(3)-(4) (emphasis added). Where removal is predicated on change of address, more conditions apply:

(1) A State *shall not* remove the name of a registrant from the official list of *eligible voters* in elections for Federal office on the ground that the registrant has changed residence unless the registrant –

(A) confirms in writing that the registrant has changed residence to a place outside the registrar’s jurisdiction in which the registrant is registered; or

(B) (i) has failed to respond to a notice described in paragraph (2); and (ii) has not voted or appeared to vote . . . in an election during the

period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

52 U.S.C.A. § 20507(d)(1) (emphases added).⁷

Thus, the statute sets out the mechanism states *must* use to determine who may be removed from the list of “eligible voters,” or, conversely, *to determine who is ineligible to vote*. Husted v. A. Philip Randolph Inst., ___ U.S. ___, 138 S. Ct. 1833, 1835 (2018) (“The National Voter Registration Act (NVRA) addresses the removal of ineligible voters from state voting rolls, 52 U.S.C. § 20501(b), including those who are ineligible ‘by reason of’ a change in residence.”). Remaining registered, or on the list of eligible voters, is meaningless if one is precluded from voting. Indeed, courts have recognized that the purpose of the NVRA’s list maintenance fail safe provisions is to protect the right to *vote*—not some arbitrary right to remain on the list of electors. See Montana Democratic Party v. Eaton, 581 F. Supp.

⁷ Defendants argue that this Court’s recent Order in Black Voters Matter Fund v. Raffensperger, No. 1:20-CV-04869-SCJ, 2020 WL 7394457 (N.D. Ga. Dec. 16, 2020) “affirms the legal sufficiency of the NCOA as a matter of law to establish a factual basis that the elector has moved.” Doc. No. [21], p. 6. Defendants misstate the Court’s holding. First, the Court never implied that the NCOA affirmatively establishes that a voter has moved—only that, *for purposes of NVRA list maintenance*, States may legally use it to flag voters who may have moved and begin the process to confirm that they have moved (notice and the passage of two general elections). See id. at *9-11.

2d 1077, 1081 (D. Mont. 2008), as amended (Oct. 10, 2008) (“[A] state cannot prevent a citizen from voting on the ground that the citizen has changed his or her address. This rule is . . . designed to protect the citizen’s *right to vote* for at least two federal election cycles while the citizen updates his or her registration information.”) (emphasis added)).

Further, Section 8(c)(2)(A) of the NVRA (the “90 Day Provision”) “requires states to ‘complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.’” Arcia v. Fla. Sec’y of State, 772 F.3d 1335, 1338–39 (11th Cir. 2014) (citing 42 U.S.C. § 1973gg-6(c)(2)(A)). Congress’ use of “the phrase ‘any program’ suggests that the 90 Day Provision has a broad meaning.” Id. at 1334. And the distinction between individualized removals and systematic ones exists because

individualized removals are safe to conduct at any time because this type of removal is usually based on individual correspondence or rigorous individualized inquiry, leading to a smaller chance for mistakes. For programs that systematically remove voters, however, Congress decided to be more cautious.

Id. at 1346. Though it is true that TTV is a private party and not a state actor, its broad-strokes challenge to over 360,000 voters’ eligibility based only on the

NCOA can be categorized as a systematic attempt to identify ineligible voters. See id. at 1334 (finding program at issue was systematic because it “did not rely upon individualized information or investigation to determine which names from the voter registry to remove. Rather, the [program] used a mass computerized data-matching process to compare the voter rolls with other state and federal databases . . .”).

Thus, Defendants appear to be attempting to circumvent the requirements of the NVRA for identifying ineligible voters. Though Defendants are correct that this is not an NVRA challenge (and indeed, it is doubtful Defendants, as private entities/persons, could even be sued under Section 8, as its requirements apply to States) the foregoing lends support to Plaintiffs’ argument that Defendants’ § 21-2-230 challenges are frivolous. See Doc. No. [11-1], p. 26.

Also, the Court is concerned that Defendants’ § 21-2-230 challenges may disenfranchise eligible voters. As Plaintiffs note, a global pandemic continues to rage. Many of the voters flagged by Defendants’ use of the NCOA may be temporarily out of state for various COVID-19 related reasons.⁸ Though it is true

⁸ Indeed, people may appear on the NCOA list for any number of reasons that do not affect their eligibility to vote. For example, Doe Plaintiffs have had their mail forwarded

that § 21-2-230 provides some due process to voters whose eligibility is challenged, the voters targeted by Defendants may be unable to appear for a county board of elections hearing to defend their eligibility, see § 21-2-230(g), or to correct their challenged absentee ballot, see § 21-2-230(e). Such issues are even more likely given that Defendants began filing their challenges *after* early voting had already begun. This concern was shared by another District Court Judge in a similar case, who recently stated:

One can imagine the mischief an immature political operative could inject into an election cycle were he to use [state challenge] statutes, not for their intended purpose of protecting the integrity of the people's democracy, but rather to execute a tawdry partisan ploy. Voters might be intimidated, confused, or even discouraged from voting upon receiving notice that their right to vote—the most precious right in a government of, by, and for the people—has been challenged.

while taking a temporary job assignment out of state. Doc. No. [26], pp. 1–2. People sometimes have their mail forwarded (and thereby appear on the NCOA) for reasons other than changing their residency. That is exactly why the NVRA prohibits states from relying solely on the NCOA to remove voters from voter rolls. And, as stated above, Defendants cannot seriously distinguish using NCOA information to remove someone from the voter rolls and using that same information to prevent someone from voting in a specific election. The end is the same: NCOA information alone is used to disenfranchise a voter. The NVRA is crafted to prevent exactly that. Defendants thus present a difference without a distinction.

Eaton, 581 F. Supp. 2d at 1079.⁹

Finally, the Court addresses Defendants' First Amendment arguments. See Doc. No. [21], pp. 19–22. Doubtless those arguments will be more fully addressed as this litigation proceeds. However, the Court notes that there are narrow carve-outs from constitutionally protected speech—including true threats.¹⁰ And, in at least one case, the Supreme Court has held that a state's interest in "preventing voter intimidation and election fraud" is sufficiently compelling to survive strict scrutiny under the First Amendment. Burson v. Freeman, 504 U.S. 191, 206 (1992).

The right to vote is a "'fundamental political right' that is 'preservative of all rights.'" Williams v. Rhodes, 393 U.S. 23, 38 (1968) (quoting Yick Wo v.

⁹ The "mischief" mentioned by the district judge in the Eaton case is of serious concern, as Defendants' broad-stroke/mass challenges (filed in the weeks immediately preceding the January 5, 2021 runoff election) could cause confusion to voters and add extra work to the boards of elections through having to possibly hold hearings and otherwise resolve over 360,000 voter challenges prior to certifying the elections — on top of their numerous other election duties.

¹⁰ A true threat is a statement in which "the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." United States v. Castillo, 564 F. App'x 500, 502 (11th Cir. 2014) (quoting Virginia v. Black, 538 U.S. 343, 359 (2003)). "The speaker need not actually intend to carry out the threat." Black, 538 U.S. at 359–60. "Rather, a prohibition on true threats 'protect[s] individuals from the fear of violence' and 'from the disruption that fear engenders,' in addition to protecting people 'from the possibility that the threatened violence will occur.'" Id. at 360.

Hopkins, 118 U.S. 356, 370 (1886)). Our country, and the South in particular, has a long and storied history of voter intimidation and harassment that has taken both overt and subtle forms. Though the Court finds, infra, that Plaintiffs have not met their burden for a preliminary injunction, that is not the end of the inquiry. It remains to be seen whether Defendants have violated federal law – and the consequences of any such violation “should not rest on the shoulders of citizens seeking to vote.” Eaton, 581 F. Supp. 2d at 1080.

The Court now turns to its analysis.

A. Plaintiffs’ Motion to Proceed Anonymously Is Due to Be Granted

Here, Plaintiffs do not allege that absent anonymity they will be compelled to disclose intimate information or statements against their penal interest. The activity they are challenging is one undertaken by private parties, and neither Doe Plaintiff is a minor. However, Doe Plaintiffs fear they and their families will become targets for harassment, retaliation, or violence for their participation in this action if their names are made public. Doc. No. [2-1]. This Court finds, in light of the current climate surrounding this runoff election, their fears to be reasonable. Since the general election, Georgia election workers and officials have reported receiving threats predicated on unfounded claims of voter fraud. Doc.

Nos. [2-1], p.2 n.1; [11-10]; [11-11]; [11-12]. The atmosphere has been serious enough for state officials to make a public plea for the accusations to stop before people are seriously harmed or killed. Doc. Nos. [2-1], p. 2 n.3; [11-10]; [11-12]. Both Doe Plaintiffs are registered in a county where the list of challenged electors has already been published as part of the public record; thus, making their names and addresses accessible online. And because Plaintiffs have submitted declarations *in camera* – which Defendants have reviewed in redacted form – this Court does not find anonymity to be fundamentally unfair to Defendants.

B. Plaintiffs Have Standing

First, Defendants do not contest that Fair Fight has established it has suffered an injury-in-fact under a diversion-of-resources theory. Doc. No. [21], p. 10. Defendants argue, however, that Fair Fight has not shown redressability. *Id.* at 13. Fair Fight countered during the preliminary injunction hearing (Doc. No. [25]) that a favorable decision will redress its injury because Fair Fight will then be able to stop diverting the resources it has had to reallocate to assist voters affected by Defendants' actions. The Court finds that Fair Fight has established standing by (1) showing an injury-in-fact through a diversion of resources, (2)

showing that Defendants caused this injury, and (3) showing that a favorable decision would provide redressability.

Defendants also argue that Doe Plaintiffs lack standing because they have not established an injury-in-fact or redressability. Id. at 11. Working without the benefit of Doe Plaintiffs' declarations, Defendants argue that Doe Plaintiffs' allegations are harm were too speculative to constitute an injury-in-fact. Id. at 12. And Defendants' contend that Doe Plaintiffs failed to establish redressability because they failed to request an injunction against the public disclosure of their information, and any fear of harassment from their names already having been published would not be redressed by the requested relief. Id. at 12-13. After reviewing Doe Plaintiffs' declarations, the Court disagrees with Defendants. Doe Plaintiffs have alleged a harm attributable to Defendants by showing that Defendants challenged their ability to vote in the upcoming runoff election, which has created stress and a fear of harm. Furthermore, the Court finds for present purposes that Doe Plaintiffs have shown redressability. If the Court ultimately provides a favorable opinion declaring that the manner in which Defendants carried out their O.G.C.A. § 21-2-230 challenges was unlawful, Doe

Plaintiffs will not be subjected to this harm in later elections. Thus, the Court finds for now that Doe Plaintiffs have established standing.¹¹

C. Plaintiffs' Motion Is Due to Be Denied Because Plaintiffs Have Not Demonstrated a Likelihood of Success on the Merits of Their Claim

Plaintiffs' request for injunctive relief stems from their claim under Section 11(b) of the Voting Rights Act of 1965, 52 U.S.C. § 10307(b). Under Section 11(b),

[n]o person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under [certain other provisions] of this title.

52 U.S.C. § 10307(b). Put another way, Section 11(b) prohibits intimidating or threatening a person for voting or attempting to vote by, among other things,

¹¹ Furthermore, even if the Court were to find that Doe Plaintiffs lack standing, the Court would undertake a full legal analysis for this emergency order because Fair Fight has standing. Cf. Am. Civil Liberties Union of Ga. v. Rabun Cty. Chamber of Commerce, Inc., 698 F.2d 1098, 1108-09 (11th Cir. 1983) ("Because we have determined that at least these two individuals have met the requirements of Article III, it is unnecessary for us to consider the standing of the other plaintiffs in this action."); see also Town of Chester, N.Y. v. Laroe Estates, Inc., --- U.S. ---, 137 S. Ct. 1645, 1650-51 (2017) ("At least one plaintiff must have standing to seek each form of relief requested in the complaint.").

frightening or promising reprisal against such a person for voting or attempting to vote. See Nat'l Coal. on Black Civic Participation v. Wohl, No. 20 CIV. 8668 (VM), 2020 WL 6305325, at *13 (S.D.N.Y. Oct. 28, 2020), reconsideration denied, No. 20 CIV. 8668 (VM), 2020 WL 6365336 (S.D.N.Y. Oct. 29, 2020) (construing “intimidate,” “threaten,” and “coerce” under Section 11(b) under their familiar definitions). Thus, “[t]o establish a claim under Section 11(b), a plaintiff must show that the defendant has intimidated, threatened, or coerced someone for voting or attempting to vote, or has attempted such intimidation, threat, or coercion.” Id.

Section 11(b) provides a private right of action to affected individuals, and such claimants may bring lawsuits against private individuals who allegedly violate Section 11(b). Id. While the more overtly violent voter-related harms that have marred this nation’s history clearly constitute voter intimidation and threats, see United States v. McLeod, 385 F.2d 734, 741 (5th Cir. 1967), courts agree that subtler forms of intimidation can give rise to a Section 11(b) claim, see Nat'l Coal. on Black Civic Participation, 2020 WL 6305325 at *16. For example, courts have found Section 11(b) violations when individuals harassed voters at the polls by implying they would be arrested, directing derisive noises at them, following

them out of polling places, and recording their license plate numbers. See Nat'l Coal. on Black Civic Participation, 2020 WL 6305325 at *16–17 (citing cases).

Further, unlike similar statutes such as Section 131(b) of the Civil Rights Act of 1957, Section 11(b) has no intent requirement. In other words, a plaintiff need not show animus or an intent to harass or intimidate in order to succeed on a Section 11(b) claim. The plain language of the statute controls, Pinares v. United Techs. Corp., 973 F.3d 1254, 1260 (11th Cir. 2020), and the wording of Section 11(b) contains no intent requirement, 52 U.S.C. § 10307(b).¹² And courts routinely interpret this provision as containing no intent requirement. See, e.g., Willingham v. Cty. of Albany, 593 F. Supp. 2d 446, 462 (N.D.N.Y. 2006); League of United Latin Am. Citizens, 2018 WL 3848404 at *3–4 (analyzing the text of Section 11(b) against similar statutes that explicitly require a showing of intent); Nat'l Coal. on Black Civic Participation, 2020 WL 6305325 at *13; but see Parson v. Alcorn, 157 F. Supp. 3d 479, 498 (E.D. Va. 2016).

¹² Indeed, looking to the legislative history, Congress specifically omitted such an intent requirement to make it easier to bring a claim under Section 11(b). See H.R. Rep. No. 89-439, at 30 (1965) (stating that “no subjective purpose or intent need be shown” to bring a Section 11(b) claim); Hearings on S. 1564 Before the S. Comm. on the Judiciary, 89th Cong. 16 (1965) (“This variance from the language of § 1971(b) is intended to avoid the . . . burden of proof of ‘purpose’ . . .”).

As the movants, Plaintiffs must clearly establish that they are likely to succeed on the merits of their claim. See Siegel v. LePore, 234 F.3d 1163, 1176 (11th Cir. 2000). Of course, that means Plaintiffs needed to present sufficient evidence to show that they are likely to succeed. See id. Here, Plaintiffs have submitted Doe Plaintiffs' signed declarations, which the Court reviewed *in camera* and filed to the docket in redacted form after Defendant's had an opportunity to review and respond. See Doc. Nos. [26]; [27]. The declarations summarize Doe Plaintiffs' reasons for changing their mailing addresses, affirm they still maintain residency in Georgia, and state their fear of retaliation from Defendants and their supporters if their name was publicly associated with this action. Plaintiffs have also submitted the declaration of Lauren Groh-Wargo, Senior Advisor to Fair Fight, in which Ms. Groh-Wargo detailed how Fair Fight learned of TTV's challenges and the actions it took in response. Doc. No. [11-25]. Plaintiffs have not submitted any other declarations or affidavits for the Court to consider. Nor have they verified their Complaint.

Plaintiffs have filed several exhibits with their Complaint and Motion for a TRO. This evidence includes various news articles on voter fraud rumors, the climate in Georgia running up to the runoff election, voter purges, and TTV's

history of coordinating voter challenges across the country. Plaintiffs also provide screenshots of a TTV tweet and press releases from its website about its initiatives for the Georgia runoff election.

In addition to an email from “gaelectorchallenge@truethevote.org” challenging Cobb County electors (Doc. No. [11-6]), they include a Cobb County press release regarding the challenges (Doc. No. [11-13]). While Cobb County’s Board of Elections ultimately denied the challenges, the press release provides public access to the list of challenged electors. Doc. No. [11-13].

Plaintiffs allege that challenge lists in other counties are also available as part of the public record, but they do not identify which counties have already published these lists, and it is unclear how many challenged electors are still at risk of having their information made accessible online. They do provide evidence of a Twitter user, “@Crusade4Freedom,” threatening to publish the entire list of the approximately 366,000 challenged Georgia electors. Doc. Nos. [11-3]; [11-21]. They state that this user claims to work with TTV. Doc. No. [11-1], p. 15. However, they provide no evidence to confirm that these tweets were made on behalf of, in association with, or at the encouragement of TTV.

After careful review and consideration of the evidence and arguments, the Court finds that Plaintiffs have not provided enough evidence at this point to show that they are likely to succeed on the merits of their claims. Most critically, the evidence provided to date does not show that Defendants have harassed or intimidated voters. First, the affidavits from Doe Plaintiffs show only that they (1) were shocked and distressed by Defendants' O.G.C.A. § 21-2-230 challenges against them and (2) fear potential harassment if their names are associated with the challenges. Doc. No. [26]. While the Court does not doubt that Doe Plaintiffs have legitimate fear of retaliation, there is insufficient evidence at this point to connect intimidation or harassment (real or attempted) to Defendants. At this stage, the connection to Defendants is too tenuous to find they have violated Section 11(b).

Second, the other evidence Plaintiffs have attached to their Complaint and Motion fails to show that *Defendants* have harassed or intimidated voters by facilitating or directly undertaking the O.G.C.A. § 21-2-230 challenges. The news articles Plaintiffs provide certainly punctuate the highly divided—and often outright dangerous—environment this election season has fomented. But as much as this milieu may be intimidating to voters, the articles do not connect

Defendants directly to intimidation suffered by the voters who are the subject of the O.G.C.A. § 21-2-230 challenges. The social media account postings likewise underscore this threatening atmosphere, but they do not show that *Defendants* have intimidated or threatened voters in violation of Section 11(b). How third-party actors react to Defendants' actions is not directly attributable to Defendants without clearer connections borne out by evidence. And while Plaintiffs do provide some evidence more directly linked to Defendants – such as the Cobb County voter challenge email (Doc. No. [11-6]) – this evidence tends to show only that Defendants are availing themselves of the O.G.C.A. § 21-2-230 voter challenge process. They do not show that Defendants' challenges or other actions have threatened or intimidated voters.

To be sure, Plaintiffs may yet prove their Section 11(b) claim. For example, during the preliminary injunction hearing (Doc. No. [25]), Plaintiffs indicated that Defendants may be undertaking such actions as offering a “bounty” to unearth voter fraud and recruiting intimidating individuals to patrol voting polls. If corroborated by evidence, such allegations may support Plaintiffs' Section 11(b) claim. And as stated above, this Court is deeply concerned that Defendants'

O.G.C.A. § 21-2-230 challenges run afoul of the NVRA.¹³ And if Plaintiffs later provide enough evidence to show that these particular O.G.C.A. § 21-2-230 challenges run afoul of the NVRA, the Court may be positioned to find that the challenges were frivolous. The frivolity of such voter challenges, in turn, may tend to support Plaintiffs' contentions that these challenges result only in voter harassment and intimidation. But at this point, Plaintiffs have failed to provide enough evidence to show that. Thus, this Court cannot grant Plaintiffs' request for a TRO or preliminary injunction based on Section 11(b).¹⁴

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiffs' Motion to Proceed Anonymously (Doc. No. [2]) and **DENIES** Plaintiffs' Motion for a Temporary Restraining Order and/or Preliminary Injunction (Doc. No. [11]).

¹³ To be clear, the Court does not suggest that O.G.C.A. § 21-2-230 facially conflicts with the NVRA. But the Court harbors serious concerns that the manner in which the voter challenges at issue are being undertaken and entertained conflicts with the NVRA.

¹⁴ Because a failure to show a likelihood of success on the merits is fatal to a party's request for a TRO, a court need not address the other requirements. Bloedorn v. Grube, 631 F.3d 1218, 1229 (11th Cir. 2011); Pittman v. Cole, 267 F.3d 1269, 1292 (11th Cir. 2001). Accordingly, because Plaintiffs have not satisfied their burden on the first prong of the analysis, this Court declines to address the remaining prongs.

While this Court denies Plaintiffs' motion for injunctive relief, this case is not yet over. As this Court has expressed clearly, an eleventh-hour challenge to the franchise of more than 360,000 Georgians is suspect. So too is the manner in which Defendants mounted their challenges. The Court will not abide attempts to sidestep federal law to disenfranchise voters. Nor will it tolerate actors brandishing these voter challenges to intimidate and diminish the franchise, for such acts diminish democracy itself. But the Court must rely on proper evidence and facts to determine whether these acts have in fact run afoul of federal law. The Court looks forward to seeing what evidence the Parties bring to bear.

IT IS SO ORDERED this 1st day of January, 2021.

s/Steve C. Jones
HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE