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

JASON FRAZIER and EARL FERGUSON,

Plaintiffs,

v.

FULTON COUNTY DEPARTMENT OF REGISTRATION AND ELECTIONS,

SHERRI ALLEN, AARON JOHNSON, MICHAEL HEEKIN, AND TERESA K. CRAWFORD, individually, and in their official capacities as members of the Fulton County Department of Registration and Elections,

KATHRYN GLENN, individually, and in her official capacity as Registration Manager of the Fulton County Department of Registration and Elections,

BRAD RAFFENSPERGER, in his official and individual capacities.

Defendants,

Case No. 1:24-cv-03819

BRIEF IN SUPPORT OF MOTION TO INTERVENE BY GEORGIA STATE CONFERENCE OF THE NAACP, GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC., THE LEAGUE OF WOMEN VOTERS OF GEORGIA, AND COMMON CAUSE GEORGIA

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INTRODUCTION AND BACKGROUND

Proposed Intervenors Georgia State Conference of the NAACP ("Georgia NAACP"), Georgia Coalition for the People's Agenda, Inc. ("GCPA" or "People's Agenda"), League of Women Voters of Georgia ("LWVGA"), and Common Cause Georgia (together the "Proposed Intervenors") move, under Federal Rule of Civil Procedure ("Rule") 24(a)(2), to intervene as of right as Defendants in this matter, or in the alternative, move for permissive intervention pursuant to Rule 24(b). Pursuant to Rule 24(c), Proposed Intervenors' Motion to Dismiss and Brief in Support is attached hereto as Exhibit 1.

Plaintiffs ask this Court to order Defendants, the Fulton County Department of Registrations and Election (the "Board") and its members, to purge nearly 2,000 Fulton County voters from the rolls on the eve of a presidential general election. They also vaguely ask the Board to identify and remove all "ineligible voters" from the voter rolls. As explained in our proposed Motion to Dismiss, the Complaint seeks a remedy that is unprecedented and in clear violation of federal law. At core, the requested relief is an improper attempt to end-run the National Voter Registration Act's ("NVRA") prohibition on systematic voter removal programs within 90 days of a federal election and its required, and exclusive, notice process for removing those voters challenged based on residency.

Proposed Intervenors are civil rights organizations dedicated to protecting the voting rights of their members and all Georgians—particularly those of Black voters and other voters of color. They seek to intervene on behalf of their members and on behalf of themselves. Plaintiffs' requested relief would not only threaten these members' fundamental right to vote but would also cause Proposed Intervenors to divert organizational resources from their voter mobilization, education, and election protection efforts to identify, contact, and assist voters affected by the Complaint in time to participate in the upcoming 2024 General Election.

Proposed Intervenors satisfy each requirement for intervention as a matter of right under Rule 24(a)(2), and the Court should grant their motion to intervene. Alternatively, the motion should be granted on a permissive basis under Rule 24(b)(1).

ARGUMENT

I. PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE AS OF RIGHT UNDER RULE 24(A)(2).

Proposed Intervenors are entitled to intervene as of right. Under Rule 24(a)(2):

> Parties seeking to intervene [as of right] must show that: (1) [their] application to intervene is timely; (2) [they have] an interest relating to

> the property or transaction which is the subject of the action; (3) [they are] so situated that disposition of the action, as a practical matter, may impede or impair [their] ability to protect that interest; and (4) [their] interest is represented inadequately by the existing parties to the suit.

Tech. Training Assocs., Inc. v. Buccaneers Ltd. P'ship, 874 F.3d 692, 695-96 (11th Cir. 2017) (alterations in original) (internal quotations omitted). "[C]ourts should resolve 'doubt[s] concerning the propriety of allowing intervention . . . in favor of the proposed intervenors because it allows the court to resolve all related disputes in a single action.'" *Zone 4, Inc. v. Brown*, No. 19-00676, 2019 WL 7833901, at *5 (N.D. Ga. Aug. 6, 2019) (quoting *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 216 (11th Cir. 1993)). Proposed Intervenors meet the requirements of interventions as of right.

A. The Motion Is Timely.

When courts examine timeliness, they consider four factors: 1) "the length of time during which the would-be intervenor knew or reasonably should have known of his interest in the case before petitioning for leave to intervene;" (2) "the extent of the prejudice that existing parties may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest;" (3) "the extent of the prejudice that

the would-be intervenor may suffer if denied the opportunity to intervene"; and (4) "the existence of unusual circumstances weighing for or against a determination of timeliness." *Comm'r, Ala. Dep't of Corr. v. Advance Local Media, LL*C, 918 F.3d 1161, 1171 (11th Cir. 2019) (internal quotations omitted).

Each of the timeliness factors weigh in favor of Proposed Intervenors. Proposed Intervenors have not delayed in filing—they learned of this litigation shortly after its filing and are submitting this motion shortly after the filing of the Complaint on August 28, 2024, *see* Compl., ECF No. 1, and before any Answer would be due. As such, no existing party to the litigation is harmed or prejudiced here, and there are no unusual circumstances in this matter that bear on timeliness of intervention. Proposed Intervenors' motion is timely.

B. Proposed Intervenors Have Significant and Strong Interests in Intervention.

"Under Rule 24(a)(2), a party is entitled to intervention as a matter of right if the party's interest in the subject matter of the litigation is direct, substantial and legally protectable." *Mt. Hawley Ins. Co. v. Sandy Lake Props., Inc.*, 425 F.3d 1308, 1311 (11th Cir. 2005) (internal quotations omitted). "In deciding whether a party has a protectable interest . . . courts must be 'flexible' and must 'focus[ ] on the particular

facts and circumstances' of the case." *Huff v. Comm'r of IRS*, 743 F.3d 790, 796 (11th Cir. 2014) (second alteration in original).

Proposed Intervenors have at least two significant interests at stake in this litigation: (1) ensuring that the members and constituents they serve remain registered to vote and are able to successfully participate in the upcoming November 5, 2024 election, and (2) continuing to engage in critical election-year activities and other organizational priorities without being forced to divert resources to address harms to their members and constituents that would flow from Plaintiffs' requested relief.

As to their members, many are eligible voters who are registered to vote in Fulton County and intend to vote on November 5, 2024. *See* Decl. of Gerald Griggs ("Griggs Decl."), attached hereto as Exhibit 2, at ¶ 11; Decl. of Helen Butler ("Butler Decl."), attached hereto as Exhibit 3, at ¶ 10; Decl. of Nichola ("Hines Decl."), attached hereto as Exhibit 4, at ¶¶ 1, 4, Decl. of Jay Young ("Young Decl."), attached hereto as Exhibit 5, at ¶ 14. The disposition of this suit will directly impact the members and constituents of Proposed Intervenors—eligible voters who stand to be disenfranchised if the Board is ordered to conduct immediate list maintenance during the NVRA quiet period or purge the nearly 2,000 voters identified in Plaintiffs'

challenges. *See Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1307 (N.D. Ga. 2018) (finding intervention as of right to be appropriate where voter intervenors would be potentially disenfranchised by the requested relief); *Bellitto v. Snipes*, No. 16-61474, 2016 WL 5118568, at *2 (S.D. Fla. Sept. 20, 2016) (granting intervention where organization "asserts that its interest and the interests of its members would be threatened by the court-ordered 'voter list maintenance' sought by Plaintiffs"); *Pub. Int. Legal Found., Inc.* v. *Winfrey* ("*PILF*"), 463 F. Supp. 3d 795, 798-802 (E.D. Mich. 2020) (permitting League intervention in NVRA suit to purge voters in order to protect interests of its members and "assure that no overzealous measures going beyond the reasonable list maintenance program required by the statute are employed, which could increase the risk of properly registered voters being removed by mistake").

Proposed Intervenors also have an interest in protecting a critical component of their election-year programs and other organizational priorities—ensuring that their members, and all Georgians, are given a full and equal opportunity to exercise their fundamental right to vote. Griggs Decl., at ¶¶ 3-5; 17; Butler Decl., at ¶¶ 4, 6, 17; Hines Decl., at ¶¶ 4, 5-8; Young Decl., at ¶¶ 4-5, 9, 16-22. To that end, Proposed Intervenors have been assisting their members and other prospective voters in

registering to vote; educating them about voting in the November 5 general election; and planning activities to mobilize these voters to the polls. Griggs Decl., at ¶ 17; Butler Decl., at ¶¶ 4, 12-13; Hines Decl., at ¶¶ 7-8; Young Decl., at ¶¶ 5, 17. But their work is at risk of being undermined if this Court orders the Board to remove registered voters from the Fulton County voter roll ahead of the General Election. This risk is particularly heightened here, where Proposed Intervenors would have to divert from their ordinary work during the 90-day NVRA quiet period and contact and re-register voters before the fast-approaching close of voter registration. Courts routinely find that public interest organizations, like Proposed Intervenors, should be granted intervention in voting cases when they demonstrate harm to their core missions and activities. *See, e.g.*, *Kobach v U.S. Election Assistance Comm'n*, No. 13-4095, 2013 WL 6511874, at *4 (D. Kan. Dec. 12, 2013) (allowing advocacy groups to intervene where interests broadly articulated as "either increasing participation in the democratic process, or protecting voting rights, or both, particularly amongst minority and underprivileged communities").

Proposed Intervenors also have an interest in avoiding the need to divert resources to respond to a mass removal of voters, particularly during the pre-election time that is extraordinarily busy for pro-voter organizations. As discussed above,

Proposed Intervenors have a full slate of planned activities ahead of the General Election, including voter registration, voter education, and voter mobilization. Griggs Decl., at ¶¶ 5, 10, 17; Butler Decl., at ¶¶ 4, 12-13; Hines Decl., at ¶¶ 7-8. Young Decl., at ¶¶ 5, 17. The Proposed Intervenors also have commitments to furthering their work in other areas such as criminal and economic justice reform. Griggs Decl., at ¶ 20; Butler Decl., at ¶¶ 14-15; *see also* Hines Decl., at ¶¶ 5, 13; Young Decl at ¶¶ 18-19. Their staff are already stretched thin, and an outcome in this case that requires Defendants to initiate an improper purge would further drain the Proposed Intervenors' limited resources. Griggs Decl, at ¶¶ 17-20; Butler Decl., at ¶¶ 6, 14-15; Hines Decl., at ¶ 13; Young Decl., at ¶ 7, 9, 13, 18-19. In such a scenario, the Proposed Intervenors would need to assist voters who might be purged, to look up whether their members and constituents are subject to a purge, and to follow-up on their members' behalf prior to Election Day, all of which would require inordinate staff and volunteer time and resources these Organizations cannot afford to lose. *Id. See also PILF*, 463 F. Supp. 3d 795, 798-802; *Issa v. Newsom*, No. 20-01055, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (permitting intervention by civil rights organizations on grounds that if plaintiffs won, then proposed intervenors would "have to devote their limited resources to educating their

members on California's current voting-by-mail system and assisting those members with the preparation of applications to vote by mail"). Proposed Intervenors thus have a significant protectible interest in intervention.

C. Proposed Intervenors and Their Members Will Be Prejudiced if They Are Not Permitted to Intervene.

When weighing Rule 24(a)(2)'s prejudice prong, courts examine whether "[t]he disposition of the action, as a practical matter, may impede or impair [a proposed intervenors'] ability to protect" their interests. *Tech. Training Assocs., Inc.*, 874 F.3d at 695-96 (internal quotations omitted). Importantly, Proposed Intervenors need not "establish that their interests *will* be impaired." *Brumfield v. Dodd*, 749 F.3d 339, 344 (5th Cir. 2014). "It would indeed be a questionable rule that would require prospective intervenors to wait on the sidelines until after a court has already decided enough issues contrary to their interests. The very purpose of intervention is to allow interested parties to air their views so that a court may consider them before making potentially adverse decisions." *Id.* at 344-45.

As discussed in detail above, Proposed Intervenors are at risk of losing their ability to protect their interests and those of their members, and thus will be prejudiced if intervention is denied. *Supra* pp. 5-8. "Historically. . . throughout the

country, voter registration and election practices have interfered with the ability of minority, low-income, and other traditionally disenfranchised communities to participate in democracy." *Ind. State Conf. of NAACP v. Lawson*, 326 F. Supp. 3d 646, 650 (S.D. Ind. 2018), *aff'd sub nom*, *Common Cause Indiana v. Lawson*, 937 F.3d 944 (7th Cir. 2019). If Proposed Intervenors are denied the ability to intervene in this case, they risk disenfranchisement of their members and injury to their core organizational interests and programs, *see supra* pp. 5-8, particularly because Defendants are not situated to adequately protect those interests. *Infra* Section I(D).

D. Proposed Intervenors' Interests Are Not Adequately Protected by Defendants.

The existing parties in this litigation may not protect their interests. The Eleventh Circuit has recognized that defendants who are elected officials and/or administer elections have divergent interests from intervening voters and voting rights organizations because they represent the interests of all voting citizens and have an interest in "remain[ing] popular and effective leaders." *Clark v. Putnam Cnty.*, 168 F.3d 458, 461-62 (11th Cir. 1999) (alteration in original) (internal quotations omitted). This principle squarely applies here: Defendants the Board and

Secretary Raffensperger have responsibilities related to the administration of elections that do not necessarily further the interests of Proposed Intervenors.

For example, as elected officials, Defendants' "interests and interpretation of the NVRA may not be aligned and its reasons for seeking dismissal" may very well be different from those of Proposed Intervenors. *Bellitto*, 2016 WL 5118568, at *2. Proposed Intervenors have repeatedly sued some of these same Defendants or their predecessors in office on various violations of voting laws. *See, e.g.*, *Ga. State Conf. of the NAACP v. Georgia*, No. 17-1397, 2017 WL 9435558 (N.D. Ga. May 4, 2017) (successful National Voter Registration Act lawsuit brought against the Georgia Secretary of State); *see generally Ga. Coal. for the People's Agenda v. Deal*, No. 4:16-cv-00269-WTM (S.D. Ga.) (Moore, J.); *Ga. State Conf. of the NAACP v. Kemp*, No. 2:16-cv-219-WCO (N.D. Ga.) (O'Kelley, J.); *Ga. Coal. for the People's Agenda v. Raffensperger*, No. 1:18-cv-4727-ELR (N.D. Ga.) (Ross, J.); *Martin v. Raffensperger*, No. 1:18-cv-4776-LMM (N.D. Ga.) (May, J.); and *Common Cause v. Raffensperger,* No. 1:22-cv-00090-ELB-SCJ-SDG (N.D. Ga.) (Branch, J.; Jones, J.; Grimberg, J.). As such, a divergence of interests is to be entirely expected.

Additionally, Defendants do not have a direct interest in protecting their own votes as the Proposed Intervenors' members do. Nor do they have an interest in

ensuring the broad voter access that is fundamental to the mission of the Proposed Intervenors. *See, e.g.*, *Meek v. Metro. Dade Cnty., Fla.*, 985 F.2d 1471, 1478 (11th Cir. 1993) ("The intervenors sought to advance their own interests in achieving the greatest possible participation in the political process. Dade County, on the other hand, was required to balance a range of interests likely to diverge from those of the intervenors."), *abrogated on other grounds*, *Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324 (11th Cir. 2007). Proposed Intervenors' interests therefore sufficiently diverge from the existing parties to satisfy Rule 24(a)(2).

Proposed Intervenors recognize that this Court granted New Georgia Project Action Fund's ("NGPAF's") Motion to Intervene as a Defendant. ECF 28. Proposed Intervenors respectfully submit that NGPAF's presence in the lawsuit does not ensure the adequate representation of Proposed Intervenors' interests. Proposed Intervenors have their own members across Georgia, including in Fulton County, who Proposed Intervenors are organizationally committed to assisting in exercising their right to vote, including in defending from frivolous mass voter challenges. Further, the work of NGPAF and Proposed Intervenors is complementary, but it is not identical. Proposed Intervenors independently have much at stake in this litigation. As such, the interests of Proposed Intervenors remain inadequately

represented. In the event that the Court finds otherwise, Proposed Intervenors respectfully request that they be granted permissive intervention and given the same opportunity to defend their interests and the interests of their members as NGPAF.

II. IN THE ALTERNATIVE, THE COURT SHOULD GRANT PERMISSIVE INTERVENTION.

"Permissive intervention under Fed. R. Civ. Proc. 24(b) is appropriate where a party's claim or defense and the main action have a question of law or fact in common and the intervention will not unduly prejudice or delay the adjudication of the rights of the original parties." *Georgia v. U.S. Army Corps of Eng'rs*, 302 F.3d 1242, 1250 (11th Cir. 2002). Even if the Court determines that Proposed Intervenors are not entitled to intervene as a matter of right, the Court should exercise its broad discretion to grant permissive intervention.

Indeed, "it is wholly discretionary with the court whether to allow intervention under Rule 24(b). . . ." *Worlds v. Dep't of Health & Rehab. Servs*., 929 F.2d 591, 595 (11th Cir. 1991). Proposed Intervenors represent a large number of Georgians whose votes are at risk if the relief sought is granted. Ensuring that the interests of these voters are advanced is a critical perspective that would serve the interests of the Court. Indeed, "a district court 'can consider almost any factor rationally

relevant but enjoys very broad discretion in granting or denying the motion [to intervene].'" *In re Martinez*, 2024 WL 2873137, at *6. As such, this is an ideal instance for the Court to exercise its discretion and grant permissive intervention for several reasons.

First, Proposed Intervenors will assert defenses that squarely address the factual and legal premises of Plaintiffs' claims, including but not limited to: (1) whether the Defendants' actions are legal under the NVRA; (2) whether Plaintiffs' proposed relief poses an unconstitutional burden on Georgia voters' fundamental right to vote; (3) the impact Plaintiffs' proposed relief would have on the Proposed Intervenors and their members, and (4) whether any of Plaintiffs' allegations, even if proven, would require the drastic remedy they seek.

Second, granting Proposed Intervenors' Motion at this early stage of the case will not delay or prejudice the adjudication of the original parties' rights, as explained above. *Supra* Section I(A). By contrast, refusing to permit intervention will deprive Proposed Intervenors of the chance to defend their significant and protectable interests in the litigation. *Supra* Sections I(B) and I(C).

CONCLUSION

For the reasons stated above, the Court should grant Proposed Intervenors' Motion to Intervene and its exhibits, and upon the granting of this Motion, deem as filed the Motion to Dismiss attached to this Motion as Exhibit 1.

Dated: September 12, 2024

Respectfully submitted,

By: /S/ Gerald Weber ___

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**Motion for admission pro hac vice forthcoming*

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1, the undersigned counsel hereby certifies that this document has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1.

Dated this 12th day of September 2024.

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