EXHIBIT 1

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

PROPOSED INTERVENOR-DEFENDANTS GEORGIA STATE CONFERENCE OF THE NAACP; GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC.; LEAGUE OF WOMEN VOTERS OF GEORGIA; AND COMMON CAUSE GEORGIA PROPOSED MOTION TO DISMISS

COMES NOW GEORGIA STATE CONFERENCE OF THE NAACP; GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC.; LEAGUE OF

WOMEN VOTERS OF GEORGIA; and COMMON CAUSE GEORGIA ("Proposed Intervenor-Defendants"), by and through its undersigned counsel of records, and files this Proposed Motion to Dismiss pursuant to the Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

The basis for this motion is fully set forth in Proposed Intervenor-Defendants' Brief in Support of Proposed Motion to Dismiss.

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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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

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

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INTRODUCTION

On the eve of the presidential election, Plaintiffs request an unprecedented and extraordinary remedy: that the Fulton County Department of Registrations and Elections (the "Board") not only remove nearly two thousand presumably lawfully registered voters from the County's voter roll, but also conduct systematic list maintenance of its entire voter roll. Plaintiffs allege that without these actions, the outcome of the election will be inaccurate, result in the dilution of "lawful" votes, and may warrant a court order decertifying the results of the election. Compl. ¶¶ 65, 66, 114. But Plaintiffs have not presented any plausible allegations to support their speculation about unlawful voting. Whatever Plaintiffs' end game is, federal law prohibits the relief they seek. And this Court should dismiss the Complaint in its entirety.

First, Plaintiffs do not have Article III standing to bring any of their claims. Nor do they have statutory standing to sustain their claims under the NVRA. Additionally, because this Court does not have original jurisdiction over the action, it may not exercise supplemental jurisdiction over Plaintiffs' state law claims. The Court therefore does not have, subject matter jurisdiction to hear Counts I-V.

Second, Plaintiffs have not stated a claim upon which relief may be granted. The legal underpinnings of Counts I-IV are non-existent. Specifically, the NVRA's prohibitions and requirements preempt state law, and to the extent that Counts II

through IV seek essentially the same relief under state law as Count I seeks under federal law—removal of registered voters on residency grounds—these state law claims are preempted by 8(c) and 8(d) of the NVRA. Furthermore, claims that the Board is derelict in its duty to conduct list maintenance are based wholly on a single vague and isolated statement, whose context is not explained, by a former Chairperson of the Board, which is insufficient to provide a plausible basis for so drastic relief as that sought by Plaintiffs here.

I. APPLICABLE LEGAL STANDARDS

A. RULE 12(b)(1)

Federal Rule of Civil Procedure 12(b)(1) permits a party to challenge the Court's subject-matter jurisdiction, meaning that parties may challenge plaintiffs' standing to assert their claims. Fed. R. Civ. P. 12(b)(1); *see Cone Corp. v. Fla. Dep't of Transp.*, 921 F.2d 1190, 1203 n.42 (11th Cir. 1991). Unlike Rule 12(b)(6), Rule 12(b)(1) does not require a court to view plaintiffs' allegations in a favorable light and permits a court to consider evidence refuting those allegations. *Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727, 732 n.9 (11th Cir. 1982). Because Rule 12(b)(1) questions the court's jurisdiction, "no presumptive truthfulness attaches to plaintiff's allegations" and "the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Flat Creek Transp., LLC v. Fed. Motor Carrier Safety Admin.*, 923 F.3d 1295, 1299 n.1 (11th Cir. 2019).

B. RULE 12(b)(6)

Under Federal Rule of Civil Procedure Rule 12(b)(6), a claim will be dismissed for failure to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Lowery v. Deal*, 850 F. Supp. 2d 1326, 1330 (N.D. Ga. 2012) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). A claim will survive a motion to dismiss only if the factual allegations in the complaint are "enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. Although the allegations of a complaint must be accepted as true and construed in the light most favorable to the plaintiff, *Powell v. Thomas*, 643 F.3d 1300, 1302 (11th Cir. 2011), the court need not accept the plaintiff's legal conclusions or for that matter, legal conclusions couched as factual allegations, *Iqbal*, 556 U.S. at 678–79. The evaluation of a motion to dismiss requires two steps: (1) eliminate any allegations in the complaint that are merely legal conclusions, and (2) where there are well-pleaded factual allegations, "assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* at 679.

II. ARGUMENT

A. THE COURT LACKS SUBJECT MATTER JURISDICTION OVER EACH OF PLAINTIFFS' CLAIMS.

Plaintiffs fail to allege bases for both constitutional and statutory standing. Because Plaintiffs ultimately cannot maintain a case or controversy under the federal statutes, this Court does not have original jurisdiction and cannot exercise supplemental jurisdiction over Plaintiffs' state law claims in Counts II-V. For these reasons, Counts I-V must be dismissed under Rule 12(b)(1) in its entirety.

1. Plaintiffs Have Not Established Constitutional Standing as Required Under Article III for Counts I, II, IIB, III, IV, and V.

Federal courts are courts of limited jurisdiction, meaning they may hear only "cases" and "controversies" under Article III of the Constitution. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Standing to sue is one component of Article III's case or controversy requirement. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). This requirement extends not only to federal claims, but also to supplemental state law claims pleaded in federal court. *Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1130 (11th Cir. 2019). Furthermore, Plaintiffs must demonstrate standing for each form of relief sought. *Id.* at 1124–25.[1]

[1] That Plaintiffs seek the extraordinary remedy of a writ of mandamus under, among other sources, the All Writs Act, does not alter constitutional standing requirements. *U.S. v. Denedo*, 556 U.S. 904, 911 (2009) ("As the text of the All Writs Act recognizes, a court's power to issue any form of relief—extraordinary or

To establish standing, Plaintiffs must demonstrate (1) an injury-in-fact, (2) that is fairly traceable to the challenged action of the defendant, and (3) is likely to be redressed by a favorable court decision. *Wood v. Raffensperger*, 981 F.3d 1307, 1313 (11th Cir. 2020); *Lujan*, 504 U.S. at 560–61. An injury in fact is "an invasion of a legally protected interest that is both concrete and particularized and actual or imminent, not conjectural or hypothetical." *Wood*, 981 F.3d at 1314. In other words, the injury must "affect the plaintiff in a personal and individual way." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). A "generalized grievance" that is "undifferentiated and common to all members of the public" does not confer standing. *Wood*, 981 F.3d at 1314 (quoting *Lujan*, 504 U.S. at 575).

Plaintiffs fail the first prong of the test. Not one of their claims contains allegations supporting a concrete and particularized injury. Indeed, Plaintiffs' thirty-six-page Complaint does no more than repeat generalized grievances against the Board for a supposed failure to comply with state and federal law. Such a generalized interest in government action is not sufficient to support standing, and Plaintiffs' claims must be dismissed. Furthermore, because Plaintiffs cannot establish an injury-in-fact under the first prong, the Court need not consider causation and redressability. *See id.*

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otherwise—is contingent on that court's subject-matter jurisdiction over the case or controversy."); *see also Burr & Forman v. Blair*, 470 F.3d. 1019 (11th Cir. 2006); *Auburn Med. Ctr., Inc. v. Peters*, 953 F. Supp. 1518 (M.D. Ala. 1996).

The Counts in Plaintiffs' Complaint all allege generalized grievances. To begin, Count II (¶¶ 73–82), Count IIB (¶¶ 83–114),[2] and Count III (¶¶ 115–20) request different forms of relief for the same underlying violation—the Board allegedly never conducts any list maintenance under O.C.G.A. § 21-2-228(a). *See, e.g.*, Compl. ¶¶ 18, 20, 26.[3] But in sustaining these requests for relief, Plaintiffs do not articulate any concrete or particularized injury other than a "clear legal right to have public election officials act in a manner consistent with state law that imposes a non-discretionary duty" to support any of these claims." Compl. ¶ 96. Such a "clear legal right" in fact does not exist, and instead amounts to nothing more than a generalized grievance that does not furnish Article III standing. *See, e.g.*, *Wood*, 981 F.3d at 1314 (finding individual voter in post-election lawsuit to delay certification did not have standing based on generalized grievance, "ensur[ing that] . . . only lawful ballots are counted"). Using slight variations in language, Counts II, IIB, and III appear to repeat the same injury as the Plaintiff alleged in *Wood*—that the Board must follow the law. But that is not enough. *Id.*; *see also Chiles v. Thornburgh*, 865

[2] Plaintiffs' Complaint has two Counts both labeled Count II. In order to distinguish the two Counts, Intervenors refer to the first Count II (Violation of O.C.G.A. § 21-2-228(a)) as Count II and the second Count II (All Writs Act Relief) as Count IIB.

[3] Count II seeks declaratory relief regarding the Board's failure to conduct list maintenance, Compl. ¶ 82, Count IIB seeks mandamus relief under the All Writs Act compelling the Board to conduct list maintenance, Compl. ¶ 114, and Count III seeks mandamus relief under state law to that same effect, Compl. ¶ 119.

F.2d 1197, 1205–06 (11th Cir. 1989); *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (no standing for party that alleged "an undifferentiated, generalized grievance about the conduct of government"); *Judicial Watch v. FEC*, 180 F.3d 277, 278 (D.C. Cir. 1999) (same). Constant repetition of the litany that they have an interest in the law being followed does not alter the reality their grievance is general. *See, e.g.*, Compl. ¶¶ 112–13, 117–18.

Additionally, Counts I and IIB make oblique references to "vote dilution" based on the failure of the Board to follow federal and state law. Compl. ¶¶ 66, 114. Plaintiffs' other Counts incorporate this paragraph by reference. Compl. ¶¶ 50, 73, 115, 121, 136. To the extent that Plaintiffs' references to vote dilution can be read as an allegation that they are injured because their votes are diluted by the votes that supposedly could be cast by ineligible voters, they fail to articulate a cognizable injury-in-fact. Mere speculation of vote dilution where "no single voter is specifically disadvantaged" is a "paradigmatic generalized grievance." *Wood*, 981 F.3d at 1314–15 (distinguishing from redistricting claims where voters in challenged district directly harmed compared to voters in other districts); *see also Bost v. Ill. State Bd. of Elections*, 684 F. Supp. 3d 720, 731 (N.D. Ill. 2023), *aff'd*, No. 23-2644, 2024 WL 3882901 (7th Cir. Aug. 21, 2024) (collecting cases where courts have "agreed that claims of vote dilution based on the existence of unlawful ballots fail to establish standing"); *Moore v. Circosta*, 494 F. Supp. 3d 289, 312 (M.D.N.C. 2020)

(collecting cases). Plaintiffs' conclusory reference to vote dilution here, unlike the concrete allegations of specific vote dilution harms in many redistricting cases, is also a generalized grievance.

Allegations of "vote dilution" are also not sufficient to confer standing under the NVRA. This means that even if Plaintiffs could meet the NVRA's statutory prerequisites to suit, which they cannot as described below, Plaintiffs still cannot satisfy Article III by alleging a "bare procedural violation" and still must demonstrate a constitutional injury-in-fact. *I See Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005) (state's rejection of plaintiff's federal registration form conferred standing under NVRA); *Nat'l Coal. for Students with Disabilities Educ., Legal Def. Fund v. Bush*, 170 F. Supp. 2d 1205, 1209–10 (N.D. Fla. 2001) (injury flowing from challenged statute's direct impact on disabled voters' ability to vote conferred standing under NVRA).

Plaintiffs also fail to articulate a concrete injury under Count IV (misinterpretation of the NVRA, Compl. ¶¶ 121–35) and Count V (failure to furnish a hearing under O.C.G.A. § 21-2-229 and general failure to comply with state law, Compl. ¶¶ 136–52). As with their previous Counts, Plaintiffs again do not specify how they were injured or continue to be injured other than the Board's alleged shirking of its duties under state law. *See e.g.*, Compl. ¶¶ 27, 30. These claims, thus,

boil down to a generalized grievance with no concrete, particularized injury to support Plaintiffs' standing.

Moreover, in Count V, Plaintiffs assert that Mr. Frazier either received untimely notice of his voter challenge hearing or received no notice of a hearing. Compl. ¶¶ 28, 147–48.[4] However, the relief requested is not for redress in the form of a notice hearing, but rather an order by this Court that the Board generally "comply with Georgia state law" as applied to all prospective voter challengers and to threaten Defendants with sanctions and contempt of court sanctions. Compl. ¶ 152. Thus Count V contains the same infirmities as the rest of the Counts: it asserts a generalized grievance that Defendants are not in "strict compliance" with state law. Compl. ¶ 152.

2. Plaintiffs Have Failed to Demonstrate Statutory Standing Under the NVRA for Counts I, IIB, and IV.

Plaintiffs' claims invoking the NVRA, Counts I, IIB, and IV, fail for another independent reason: their failure to provide pre-suit notice prior to commencing a lawsuit.[5] The NVRA creates a private right of action for an "aggrieved" person to

[4] Plaintiffs characterize an email included in Paragraph 28 of the Complaint as supporting the allegation that "the FCDRE confirmed in writing to Mr. Frazier that it had violated Georgia state law." Compl. ¶¶ 28, 147–48. But that email does not say anything about the Board violating Georgia state law.

[5] Courts have reached different conclusions on the question of whether the NVRA's notice requirements are jurisdictional, and thus whether they are best addressed under Rule 12(b)(1) or 12(b)(6). *Compare League of Women Voters of Fla., Inc. v. Byrd*, 2023 WL 11763040, at *1 (N.D. Fla. July 10, 2023) (NVRA notice not

provide written notice of a statutory violation to the state's chief election official and provide an opportunity to cure the violation within the timeline established by statute before the aggrieved person files a lawsuit. 52 U.S.C. § 20510(b). As this Court has explained previously, "the notice provision is meant to give those violating the NVRA the chance "to attempt compliance with its mandates before facing litigation." *Ga. State Conf. of NAACP*, 841 F. Supp. 2d at 1335. Notice is adequate if it "(1) sets forth the reasons that a defendant purportedly failed to comply with the NVRA, and (2) clearly communicates that a person is asserting a violation of the NVRA and intends to commence litigation if the violation is not timely addressed." *Black Voters Matter Fund*, 508 F. Supp. 3d at 1293.

Courts further reject attempts from prospective plaintiffs to "piggyback" on notice of an NVRA violation provided by others. *Bellitto v. Snipes*, 221 F. Supp. 3d 1354, 1363 (S.D. Fla. 2016) (citing *Scott v. Schedler*, 771 F.3d 831 (5th Cir. 2014)).

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jurisdictional) *and Pub. Int. Legal Found. v. Benson*, 2022 WL 21295936, at *7 (W.D. Mich. Aug. 25, 2022) (same) *with Black Voters Matter Fund v. Raffensperger*, 508 F. Supp. 3d 1283, 1296 (N.D. Ga. 2020) ("[T]he Court finds that Plaintiffs failed to satisfy the NVRA's pre-suit notice requirement and thus at this time do not have statutory standing to sue under the NVRA") *and Ga. State Conf. of NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1335 (N.D. Ga. 2012) (same). Whether or not NVRA notice is jurisdictional, courts agree that failure to comply with NVRA notice requirements justifies dismissal. In accordance with the precedent of this Court, Plaintiffs move under Rule 12(b)(1), but in the alternative move under Rule 12(b)(6). *See Voice of the Experienced v. Ardoin*, 2024 WL 2142991, at *8 n.3 (M.D. La. May 13, 2024).

A plaintiff must *themselves* comply with the NVRA's notice requirement and cannot merely rely on a co-plaintiff's notice. *Id.*

Plaintiffs acknowledge that they were required to provide notice to Defendants of an alleged violation of the NVRA to exercise the NVRA's private right of action. Compl. ¶¶ 62–63. But for three reasons, they have failed to satisfy that requirement. *First*, Plaintiffs Complaint makes only one cursory reference to the required pre-suit notice under the NVRA, which fails to even allege that they met the required scope of notice under the Act. Compl. ¶ 2 ("Mr. Ferguson placed the FCDRE on notice that it was acting in violation of the NVRA on or about March 18, 2024, which is more than 90 days ago, and as of the date of this filing, the FCDRE has failed to come into compliance or otherwise correct its violation of the NVRA."). The Complaint does not provide any other details, including whether the notice informed the Board that Mr. Ferguson planned to commence litigation if the violation was not addressed, or even if the notice was written. As alleged, the notice is insufficient, and Plaintiffs' NVRA claims against the Board should be dismissed. *See Black Voters Matter Fund*, 508 F. Supp. 3d at 1293.

Second, the Complaint does not allege that Plaintiffs served written notice on the "chief election official and the State" as required by the NVRA. 52 U.S.C. § 20510(b)(1). Instead, the Complaint only alleges that "Mr. Ferguson placed *the FCDRE* on notice that it was acting in violation of the NVRA on or about March 18,

2024." Compl. ¶ 2. Notice that is not served on Mr. Raffensperger does not satisfy Section 11 of the NVRA. 52 U.S.C. § 20510(b)(1). Plaintiffs' NVRA claims should be dismissed based on improper notice.

Third, even if Mr. Ferguson provided proper notice under the NVRA, the Complaint contains no allegations that Mr. Frazier did the same. It is well-established that a plaintiff may not "piggyback" on the notice provided by another. *See Bellitto*, 221 F. Supp. 3d at 1363. As such, Mr. Frazier's NVRA claims must be dismissed on this ground alone.

3. *Because No Original Jurisdiction Exists, the Court Has No Basis for Exercising Supplemental Jurisdiction Over Plaintiffs' State Law Claims in Counts II-V.*

A complaint must contain "a short and plain statement of the grounds for the court's jurisdiction[.]" Fed. R. Civ. P. 8(a). A federal court may have original jurisdiction under a specific statutory grant, federal-question jurisdiction, or diversity jurisdiction. *Baltin v. Alaron Trading Corp.*, 128 F.3d 1466, 1469 (11th Cir. 1997).

In their Complaint, Plaintiffs aver the Court has subject matter jurisdiction over this case as it arises under federal law. Compl. ¶ 7. Plaintiffs further allege that the Court may exercise supplemental jurisdiction over the state law claims. Compl. ¶ 9; 28 U.S.C. § 1367 ("[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other

claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."). Counts II, IIB, III, IV, and V all invoke violations of state law and/or seek relief under state law. *See* Compl. ¶¶ 18, 20, 26, 27, 30.

But "for a federal court to invoke supplemental jurisdiction . . . it must first have original jurisdiction over at least one claim in the action." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 554 (2005). As demonstrated in detail above, Plaintiffs have failed to establish the existence of a case and controversy for any claim, including federal claims, under Article III. Therefore, they cannot maintain their state law claims (Counts II–V) as this Court lacks original jurisdiction over all federal law claims.

B. THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

The Court should dismiss Counts I–IV for failure to state a claim under federal and state law. Plaintiffs' claim arguing that the NVRA mandates systematic list maintenance on residency grounds within the 90-day quiet period is prohibited by Sections 8(c) and 8(d) of the NVRA. And to the extent, Plaintiffs demand the Board conduct their preferred form of list maintenance under state law, *e.g.*, Counts II, IIB, III, and IV, their requested relief is preempted by the NVRA. Const. Article VI, Clause 2; *Ariz. v. Inter Tribal Council of Ariz., Inc*., 570 U.S. 1, 5 (2013) (NVRA pre-empts contrary state law).

1. Count I Should Be Dismissed.

In Count I, Plaintiffs' request declaratory and injunctive relief under the NVRA for the Board's alleged failure to conduct a reasonable program to identify and remove dead voters and voters who no longer live in the county *before* the General Election. 52 U.S.C. § 20507(a)(4). Compl. ¶ 72, Prayer for Relief B, C. Count I should be dismissed in its entirety because the requested relief violates Sections 8(c) and 8(d) of the NVRA and fails to plead factual allegations that plausibly suggest an entitlement to relief, *Iqbal*, 556 U.S. at 683.

i. Section 8(c) Prohibits the Board from Acting on Plaintiffs' Residency Challenges Within the 90-day Quiet Period Before the General Election.

NVRA Section 8(a)(4), the provision Plaintiffs allege the Board violated, requires states and localities to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of" the "death of the registrant" or "a change in the residence of the registrant." 52 U.S.C. § 20507(a)(4)(A)-(B). But Section 8(c) circumscribes Section 8(a)(4). Section 8(c) provides that "any program the purpose of which is to systematically remove the names of ineligible voters from the list of eligible voters" on the basis of residency changes cannot be conducted within 90 days of a primary, general, or runoff election for federal office. 52 U.S.C. § 20507(c)(2). *See, e.g.*, *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1345–46 (11th Cir. 2014).

To the extent that Count I asks the Court to require Defendants to conduct a list maintenance program to remove voters who have allegedly changed residence prior to the General Election, the claim fails as a matter of law. Section 8(c) prohibits that relief. *See* Compl. ¶¶ 50–72. The 90-day clock began to run on August 7. Therefore, the Board may not remove voters on residency grounds pursuant to a systematic program, including non-individualized mass voter challenges, before the November 5 general election.[6] In response, throughout their Complaint, Plaintiffs offer a theory never before adopted by any other court and expressly rejected by the Department of Justice and existing caselaw. Plaintiffs contend that Section 8(c)'s 90-day quiet period applies only to state-run programs for systematic removals, not to challenges brought by private citizens who use data matching to identify groups of voters and then seek to have government officials engage in systematic removals of those same voters. *See, e.g.*, Compl. ¶ 126.

This claim fails as both a a matter of fact and a matter of law, as there cannot be removals without state action governed by Section 8(c). Courts to have addressed this issue have squarely rejected allegations identical to the one presented by the Plaintiffs in this case. In *Majority Forward v. Ben Hill Cnty. Bd. of Elections*, a

[6] Plaintiffs allege that Mr. Ferguson's residency challenges were rejected because of his use of a systematic program. *See, e.g.*, Compl. ¶ 127. Plaintiffs are asking the Court to require the Board to act on these challenges, and the NVRA, as discussed below, prohibits the Board from doing so on the basis of a systematic program.

Georgia federal district court found that it would likely violate the NVRA for a county board of elections to sustain a private voter challenge based on mass data-matching devoid of any individualize inquiry within 90 days of a federal election. 512 F. Supp. 3d 1354, 1369–70 (M.D. Ga. 2021). And in *North Carolina State Conference of the NAACP v. North Carolina State Board of Elections*, the court similarly concluded that thousands of residency challenges mounted by a private elector within the 90 days before the general election "constitutes the type of 'systematic' removal prohibited by the NVRA." 2016 WL 6581284, at *8 (M.D.N.C. Nov. 4, 2016). The court reasoned "though the State Board is correct that individuals initiated the challenge process at issue, these individuals cannot administer hearings related to the challenges, make findings of probable cause, and actually remove a voter from the voter rolls, which is the injury alleged here." *Id.* The court went on, "thus, the challenges would have no effect on the voter if such challenges were not processed and sustained by the County Boards." *Id.* Applying the same reasoning here dooms Plaintiffs' argument that Section 8(c) does not apply to third-party challenges under 229(a).

This is the only way that the NVRA can be read. That is because the problems sought to be avoided by the 90-day restriction—prejudice to improperly removed voters and burdens on election officials in the days leading up to the election—are the same whether the systematic list maintenance is initiated by the election board,

by an individual's request, or by order of a court. Indeed, DOJ's recent guidance expressly clarifies that the 90-day "deadline also applies to list maintenance programs based on third-party challenges derived from any large, computerized data-matching process." Dep't of Justice, *Voter Registration List Maintenance: Guidance Under Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507* (Sept. 2024), https://www.justice.gov/crt/media/1366561/dl [hereinafter "DOJ Guidance"]. And, the Eleventh Circuit has explained broadly that the "the 90 Day Provision strikes a careful balance: It permits systemic removal programs at any time except for the 90 days before an election because that is when the risk of disenfranchising eligible voters is the greatest." *Arcia*, 772 F.3d at 1346 (prohibiting state from removing alleged non-citizens from voter registration list within 90-day quiet period). Plaintiffs' conclusory—and incorrect—legal allegations do not state a claim upon which relief can be granted.

ii. Under Section 8(d), the Board Must Provide Proper Notice to Challenged Voters Identified by Plaintiffs.

Plaintiffs' requested relief, that the Board immediately act and remove the challenged voters, is also straightforwardly prohibited by the NVRA. Section 8(d) of the NVRA prohibits states from effectuating any immediate removals of registrants based on residency without following proper notice process. 52 U.S.C. § 20507(d)(1). Under Section 8(d), a state may remove a person from the voter rolls

on residency grounds 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). *Id.* §20507(d)(2). The notice process provides that a registrant may not be removed from the rolls unless they fail to respond to a postage prepaid and pre-addressed return card, sent by forwardable mail, and subsequently do not vote in two federal general election cycles. *See* §20507(d)(1). *See Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 762 (2018). In sum, Section 8(d) of the NVRA prohibits the relief sought by Plaintiffs in Count I.

The Complaint does not contain a single allegation that proper notice has been given to any of the challenged voters. For that reason alone, Count I must be dismissed.

iii. Plaintiffs Offer No Factual Allegations to State a Plausible Claim to Relief.

Count I alleges that the Board has violated Section 8(a) of the NVRA by failing to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters." Compl. ¶ 72; 52 U.S.C. § 20507(a)(4)(A)-(B). Plaintiffs' requested relief—the Board must undertake a general program to remove voters who have died and/or moved before the General Election—rests on one threadbare, out-of-context factual allegation. Plaintiffs allege

more than 20 times in the Complaint that a former Chairperson of the Board said at one point that the Board does not independently search for dead people, felons, people who live out of state. Compl. at 1, 2, ¶¶ 14, 22, 33-35, 68-71, 77-81, 112, 117, 140. The video clip taken from Plaintiff Frazier's own X (formerly Twitter) post, dated November 15, 2023, provides no other context for the statement. Besides this quote, Plaintiffs allege no other facts shedding light on the Board's process or lack thereof, or timing of its list maintenance activities.

Plaintiffs go on, claiming that if the Board "fulfilled its obligations" under the NVRA, then Plaintiffs would not have been able to identify thousands of allegedly ineligible registrants through their data matching in the first place. Compl. ¶¶ 23, 71, 80, 141. This allegation also does nothing to support the extraordinary relief requested in this Count. In fact, the allegation assumes that Plaintiffs' nearly 2000 challenges are accurate when there is a high likelihood that these challenges, especially if based on the National Change of Address Database, are inaccurate. *Arcia*, 772 F.3d at 1346 (noting systematic programs undertaken on eve of election increase risk that voters may be misidentified due to unintentional mistakes in Secretary's data-matching process); *Majority Forward*, 512 F. Supp. 3d at 1369 (noting inaccuracies in the thousands of residency challenges brought based on database matching between the voter list and the voter's name in the U.S. Postal Service's National Change of Address database).

2. Count II Should Be Dismissed.

In Count II, Plaintiffs allege that the Board violated O.C.G.A. § 21-2-228(a), which imposes a duty on the board of registrars of each county or municipality "of examining from time to time the qualifications of each elector of the county or municipality whose name is entered upon the list of electors . . . ." *See* O.C.G.A. § 21-2-228(a). To the extent that Plaintiffs seek relief under state law in the form of an order that the Board systematically remove voters on residency grounds, that relief is preempted by Sections 8(c) and 8(d) of the NVRA.

Furthermore, Plaintiffs' charge that the Board failed to comply with Section 228(a), again, rests on the same tired factual allegation—a soundbite from the former Chairperson of the Board from November 15, 2023. Compl. ¶¶ 78–80. This fact does not warrant the declaratory, injunctive, or mandamus relief Plaintiffs' seek. Compl. ¶¶ 81–82, Prayer for Relief (D). Thus, Count II—violation of O.C.G.A. § 21-2-228(a)—should be dismissed.

3. Count IIB Should Be Dismissed.

In Count IIB, Plaintiffs seek a writ under the All Writs Act[7] compelling the Board to comply with list maintenance duties under Section 8(a)(4) of the NVRA

[7] The All Writs Act provides that "[the Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law," and further provides that "[a]n alternative writ or rule nisi may be issued by a justice or judge or a court [with] jurisdiction.]" 28 U.S.C. § 1651.

and O.C.G.A. § 21-2-228(a). The specific writ sought is a writ of mandamus, which confers on a district court the power "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. By all accounts, mandamus "is an extraordinary" and "equitable remedy" "which should be utilized only in the clearest and most compelling of cases." *Cash v. Banhart*, 327 F.3d 1252, 1257 (11th Cir. 2003). Mandamus relief is appropriate only when: (1) the plaintiff has a clear right to the relief requested; (2) the defendant has a clear duty to act; and (3) "no other adequate remedy [is] available." *Id.*

Plaintiffs fail on all factors. The Board does not owe any legal duty to Plaintiffs and is expressly prohibited from granting the relief that they seek. Sections 8(c) and 8(d) of the NVRA forbid removing voters on residency grounds within the 90-day period before the General Election. Section 8(a)(4) requires only a "reasonable" program of list maintenance. Use of the word "reasonable" demonstrates that there inherently is discretion afforded under that provision, and thus mandamus is inappropriate. And § 21-2-228(a) does not place any affirmative duty on the Board, contrary to Plaintiffs' allegations, to remove voters on any grounds. Indeed, § 21-2-235 of the Georgia Election Code lays out a process for placing voters who have change residence on the inactive voter list instead of outright purging these voters as Plaintiffs request. Because the Complaint contains no allegations to the contrary, there is no basis for the Court to draw a reasonable

inference that mandamus is appropriate here. Nor do Plaintiffs offer any facts that they exhausted all other avenues of relief. The Court should therefore dismiss Count IIB.

4. Count III Should Be Dismissed.

Under Count III, Plaintiffs seek mandamus relief under state law, O.C.G.A. § 9-6-20, requesting the Board "examine the qualifications of each elector" as required under O.C.G.A. § 21-2-228 and "remove all ineligible voters from its voter roll before the November 5, 2024 election." Compl. ¶ 120 (emphasis in the original). As discussed under Count IIB, the NVRA prohibits the relief—immediate removal of voters on residency grounds. Furthermore, the Georgia Election Code itself does not create any affirmative duty on the Board to conduct list maintenance and remove "**all ineligible voters**" immediately before the General Election. And the very section Plaintiffs cite directs that the Board examine these qualifications "from time to time," O.C.G.A. § 21-2-228(a), a directive completely at odds with the particular timeframe they insist upon, demonstrating that there is no such clear legal duty sufficient to support mandamus.

Like federal mandamus, mandamus under state law is considered "extraordinary relief" and does not issue against a public officer unless discretion "is grossly abused." *Soloski v. Adams*, 600 F. Supp. 2d 1276, 1289 (N.D. Ga. 2009). Under applicable Georgia law, "mandamus will issue against a public officer: (1)

when there is a clear legal right to the relief sought; or (2) when there has been a gross abuse of discretion." *Id.* (citing *Jackson Cnty. v. Earth Res., Inc.*, 627 S.E.2d 569, 571 (Ga. 2006)). Plaintiffs have not adequately pleaded any allegations to support granting this extraordinary relief under state law. The Court should dismiss Count III.

5. Count IV Should Be Dismissed.

Under Count IV, Plaintiffs seek declaratory relief against the Board and Secretary Raffensperger's alleged "misapplication" of the NVRA's 90-day provision to Section 229(a) challenges. Compl. ¶ 135. Plaintiffs contention that "a 90-day rule would be inapplicable to a challenge against voters which was created by a data-matching process," conflicts with the plain text of Section 8(c).

As detailed above, Plaintiffs' legal conclusion that the 90-day rule does not apply to third-party database matching challenges under Section 229(a) is unsupported by any legal authority. This conclusion is further contradicted by both binding 11th Circuit precedent, *Arcia*, 772 F.3d at 1344 (Section 8(c) applies to programs that "use[] a mass computerized data-matching process") and recent DOJ guidance, DOJ Guidance at 4. Furthermore, Plaintiffs have provided no factual basis for alleging that the Board does not maintain accurate voter rolls or for arguing that it must be ordered to investigate its lists for ineligible voters. Thus, the Court should dismiss Count IV.

CONCLUSION

For the foregoing reasons, the Court should dismiss all Counts in Plaintiffs' Complaint.

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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