

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

VOTE.ORG; GEORGIA ALLIANCE
FOR RETIRED AMERICANS;
COMMUNICATIONS WORKERS OF
AMERICA LOCAL 3204 RETIRED
MEMBERS COUNCIL; and
PRIORITIES USA,

Plaintiffs,

v.

GEORGIA STATE ELECTION
BOARD; EDWARD LINSEY,
JANICE W. JOHNSTON, SARA
TINDALL GHAZAL, and MATTHEW
MASHBURN, in their official
capacities as members of the Georgia
State Election Board; FULTON
COUNTY REGISTRATION AND
ELECTIONS BOARD; PATRISE
PERKINS-HOOKER, AARON V.
JOHNSON, MICHAEL HEEKIN,
and TERESA K. CRAWFORD in
their official capacities as members of
the Fulton County Registration and
Elections Board; DEKALB COUNTY
BOARD OF REGISTRATION AND
ELECTIONS; NANCY JESTER,
SUSAN MOTTER, VASU
ABHIRAMAN, ANTHONY LEWIS,
and KARLI SWIFT in their official
capacities as members of the DeKalb
County Board of Registration and
Elections,

Defendants.

CIVIL ACTION FILE
NO. 1:22-CV-1734-JPB

**DEFENDANTS DEKALB COUNTY BOARD OF REGISTRATION
AND ELECTIONS, NANCY JESTER, SUSAN MOTTER, VASU
ABHIRAMAN, ANTHONY LEWIS, AND KARLI SWIFT'S ANSWER
AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' FIRST
AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

COME NOW, Defendants DeKalb County Board of Registration and Elections, Nancy Jester, Susan Motter, Vasu Abhiraman, Anthony Lewis, and Karli Swift (the "DeKalb County Defendants"), named as Defendants in the above-styled action, and file their Answer and Affirmative Defenses to Plaintiffs' Complaint for Declaratory and Injunctive Relief, and show this Court as follows:

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Plaintiffs fail to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiffs lack standing to bring all, or a portion, of their claims against the DeKalb County Defendants.

THIRD DEFENSE

Plaintiffs lack a legal right to the relief sought.

FOURTH DEFENSE

The DeKalb County Defendants have not breached a duty owed to Plaintiffs.

FIFTH DEFENSE

The DeKalb County Defendants' compliance with Georgia law is being carried out in good faith, without conscious, reckless, or negligent disregard for the rights of any voter.

SIXTH DEFENSE

The DeKalb County Defendants have not subjected Plaintiffs to the deprivation of any rights, privileges, or immunities guaranteed by law.

SEVENTH DEFENSE

The DeKalb County Defendants are not capable of providing a remedy to Plaintiffs since their powers and duties do not include the ability to determine the voting laws or system of the State of Georgia.

EIGHTH DEFENSE

Plaintiffs' claims against the individually-named DeKalb County Defendants are subject to dismissal because they are duplicative of the claims against the DeKalb County Board of Registration and Elections.

NINTH DEFENSE

The DeKalb County Defendants assert all available affirmative defenses set forth in Fed. R. Civ. P.8(c).

TENTH DEFENSE

Plaintiffs' claims are barred by sovereign immunity and the Eleventh Amendment of the United States Constitution.

ELEVENTH DEFENSE

With respect to the 2024 elections, Plaintiffs' requested relief is barred by the *Purcell* principle.

TWELFTH DEFENSE

By way of response to the specific allegations contained in Plaintiffs' Complaint, the DeKalb County Defendants answer as follows:

NATURE OF THE CASE

1.

The DeKalb County Defendants admit that Plaintiffs properly quoted a portion of 52 U.S.C. § 10101(a)(2)(B). The DeKalb County Defendants deny all other allegations in Paragraph 1.

2.

The DeKalb County Defendants admit that O.C.G.A. § 21-2-381 states that an application shall include "an oath for the elector or relative to write his or her usual signature with a pen and ink affirming that the elector is a

qualified Georgia elector and the facts presenting on the application are true.” As for all other allegations in Paragraph 2, the DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 2; those allegations therefore stand denied by operation of law.

3.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 3; those allegations therefore stand denied by operation of law.

4.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 4; those allegations therefore stand denied by operation of law.

5.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 5; those allegations therefore stand denied by operation of law.

6.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 6; those allegations therefore stand denied by operation of law.

7.

The DeKalb County Defendants deny the allegations in Paragraph 7.

JURISDICTION AND VENUE

8.

The DeKalb County Defendants admit that Plaintiffs have brought this suit pursuant to 52 U.S.C. § 10101 and 42 U.S.C. §§ 1983 and 1988. The DeKalb County Defendants deny all other allegations in Paragraph 8.

9.

The DeKalb County Defendants admit the allegations in Paragraph 9.

10.

The DeKalb County Defendants admit the allegations in Paragraph 10.

11.

The DeKalb County Defendants admit the allegations in Paragraph 11.

12.

The DeKalb County Defendants admit the allegations in Paragraph 12.

PARTIES

13.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 13; those allegations therefore stand denied by operation of law.

14.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 14; those allegations therefore stand denied by operation of law.

15.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 15; those allegations therefore stand denied by operation of law.

16.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 16; those allegations therefore stand denied by operation of law.

17.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 17; those allegations therefore stand denied by operation of law.

18.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 18; those allegations therefore stand denied by operation of law.

19.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 19; those allegations therefore stand denied by operation of law.

20.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 20; those allegations therefore stand denied by operation of law.

21.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 21; those allegations therefore stand denied by operation of law.

22.

The DeKalb County Defendants admit that Edward Lindsey, Janice W. Johnston, Sara Tindall Ghazal, and Matthew Mashburn are members of the Georgia State Election Board and are named in their official capacities. The DeKalb County Defendants further admit that the statute and regulation referenced in Paragraph 22 exist. The remaining allegations in Paragraph 23 are denied.

23.

The DeKalb County Defendants admit that Patrise Perkins-Hooker, Kathleen D. Ruth, Aaron V. Johnson, Michael Heekin, and Teresa K. Crawford are members of the Fulton County Registration and Elections Board and are named in their official capacities. The DeKalb County Defendants further admit that the statute and regulation referenced in Paragraph 23 exist. The remaining allegations in Paragraph 23 are denied.

24.

The DeKalb County Defendants admit that Nancy Jester, Susan Motter, Vasu Abhiramen, Anthony Lewis, and Karli Smith are members of the DeKalb County Board of Registration and Elections and are named in their official capacity. The DeKalb County Defendants further admit that the statute and regulation referenced in Paragraph 24 exist. The remaining allegations in Paragraph 24 are denied.

STATEMENT OF FACTS AND LAW

25.

The DeKalb County Defendants admit the allegations in Paragraph 25.

26.

The DeKalb County Defendants admit that the statute and regulation referenced in Paragraph 26 exist. The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of

the remaining allegations in Paragraph 26; those allegations therefore stand denied by operation of law.

27.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 27; those allegations therefore stand denied by operation of law.

28.

The DeKalb County Defendants admit that 2021 Ga. Laws, Act 9, Section 2 exists and is properly quoted but deny that it is a part of the operative wording of the statute. The DeKalb County Defendants deny all remaining allegations in Paragraph 28.

29.

The DeKalb County Defendants admit that the statute referenced in Paragraph 29 exists and is accurately cited in Paragraph 29. The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 29; those allegations therefore stand denied by operation of law.

30.

The DeKalb County Defendants admit that the statutes and regulation referenced in Paragraph 30 exist and that registrars and absentee ballot clerks are constrained to follow the law.

31.

The DeKalb County Defendants admit that the statute and regulation referenced in Paragraph 31 exist and are accurately cited in Paragraph 31. The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 31; those allegations therefore stand denied by operation of law.

32.

The DeKalb County Defendants admit that the statutes referenced in Paragraph 32 exist and are accurately cited in Paragraph 32. The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 32; those allegations therefore stand denied by operation of law.

33.

The DeKalb County Defendants deny the allegations in Paragraph 33.

CLAIM FOR RELIEF

COUNT I

**52 U.S.C. § 10101; 42 U.S.C. § 1983
Violation of 52 U.S.C. § 10101(a)(1)(B)**

34.

The DeKalb County Defendants restate and reincorporate by reference Paragraphs 1–7 and 22–30 of their Answer, as though fully set out herein.

35.

The DeKalb County Defendants admit that the statute referenced in Paragraph 35 exists and is accurately cited.

36.

The DeKalb County Defendants admit that the statute and case law referenced in Paragraph 36 exist and are accurately cited.

37.

Paragraph 37 contains legal conclusions, and as such, does not require an admission or denial. To the extent Paragraph 37 requires a response, the DeKalb County Defendants deny the allegations in Paragraph 37.

38.

The DeKalb County Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 38; those allegations therefore stand denied by operation of law.

39.

The DeKalb County Defendants admit that the caselaw referenced in Paragraph 39 exists and is accurately cited. All other allegations in Paragraph 39 are denied.

40.

Paragraph 40 asserts a legal conclusion. To the extent Paragraph 40 contains factual allegations or alleges any violation of law by the DeKalb County Defendants, such allegations are denied.

41.

In responding to Plaintiffs' unnumbered "WHEREFORE" clause and the prayer for relief, the DeKalb County Defendants deny the same as pleaded and deny that Plaintiffs are entitled to any of the relief requested from the DeKalb County Defendants.

42.

Any and all allegations contained in Plaintiffs' Complaint not specifically admitted are expressly denied.

WHEREFORE, having answered Plaintiffs' Complaint within the time allowed by law, the DeKalb County Defendants respectfully request:

- (a) that all of Plaintiffs' prayers for relief be denied;
- (b) that the claims against the DeKalb County Defendants in this action be dismissed;
- (c) that all costs incurred by the DeKalb County Defendants to defend this action be cast upon Plaintiff;

(d) for such other and further relief that is deemed just and proper by the Court.

Respectfully submitted this 30th day of November, 2023.

HALL BOOTH SMITH, P.C.

/s/ R. David Ware

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CERTIFICATE OF SERVICE

I hereby certify that I filed **DEFENDANTS DEKALB COUNTY BOARD OF REGISTRATION AND ELECTIONS, NANCY JESTER, SUSAN MOTTER, VASU ABRIRAMAN, ANTHONY LEWIS AND KARLI SWIFT'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** through the Court's CM/ECF System, which will send electronic service to the following:

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Respectfully submitted this 30th day of November, 2023.

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