

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

VOTE.ORG, *et al.*,

Plaintiffs,

v.

GEORGIA STATE ELECTION
BOARD; *et al.*,

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 MOTION
FOR SUMMARY JUDGMENT**

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 this motion for summary judgment and brief in support pursuant to Federal Rule of Civil Procedure 56.

The DeKalb County Defendants hereby join the State Defendants' Motion for Summary Judgment [Doc. 156] and adopt and incorporate as their own the State Defendants' factual assertions, legal analysis, and arguments

except for that contained in Section I, A, 1 of the State Defendants' brief [Doc. 156-1].

The DeKalb County Defendants also make the two following arguments to be considered in addition to the incorporated portions of the State Defendants' brief.

ARGUMENT

I. Plaintiffs have not established that their injuries are traceable to the DeKalb County Defendants.

First, Plaintiffs cannot demonstrate a “causal connection between [their] injury and the challenged action of the [DeKalb County Defendants].” *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1296 (11th Cir. 2019). In other words, Plaintiffs' injuries, such as they are, are not traceable to the DeKalb County Defendants' conduct. Plaintiffs have alleged that the Georgia General Assembly, and not the DeKalb County Defendants, created the law in question, and no evidence has been produced that tends to prove otherwise. [Docs. 159-3 ¶ 13; 9 ¶¶ 2-3, 29-30]. And to the extent that the DeKalb County Defendants enforce the law in question, that is because they have no choice but to follow state law in the execution of their duties. [Doc. 149 at 91:23-92:3 (corporate representative of DeKalb County Board of Registration and Elections testifying that the DeKalb County Defendants are required to follow Georgia law, including the law challenged here)]. Likewise, the DeKalb County

Defendants assert that they should not, in any event, be liable for costs, disbursements, or attorneys' fees in this matter simply for following state law.

II. The claims against the individual members of the DeKalb County Board of Registration and Elections are duplicative.

Second, the Court should dismiss the individual DeKalb County Defendants because claims against those individual defendants are duplicative of claims against the DeKalb County Board of Registration and Elections.

The Supreme Court has explained that suits against defendants in their individual capacities seek to impose personal liability, but suits against individuals in their official capacities “in contrast, generally represent only another way of pleading an action against an entity of which an officer is an agent.” *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (internal citations omitted). In other words, “[s]uing individuals in their official capacities is another way of pleading an action against an entity of which an officer is an agent.” *Edwards v. Wallace Cmty. Coll.*, 49 F.3d 1517, 1524 (11th Cir. 1995). The Eleventh Circuit reiterated this rule in *Busby v. City of Orlando*, where the Circuit affirmed a district court’s dismissal of multiple individuals sued in their official capacity because the entity they represented was also named as a defendant. *Busby v. City of Orlando*, 931 F.2d 764, 776 (11th Cir. 1991).

When individual defendants and the entity they represent are both sued, it is irrelevant whether the suit is for money damages or prospective relief.

This is because “local government units can be sued directly for damages and injunctive or declaratory relief.” *Graham*, 473 U.S. at 167 n.14 (citing *Memphis Police Dept. v. Garner*, 471 U.S. 1 (1985)). In sum, there is no “rule that a court make a distinction between the types of damages sought in assessing whether a claim for relief is duplicative under *Busby*.” *Riles v. Augusta-Richmond Cnty. Comm’n*, 2017 WL 3597488, at *3 (S.D. Ga. Aug. 21, 2017).

Here, the DeKalb County Defendants are each members of the DeKalb County Board of Registration and Elections. [Doc. 96 ¶ 24]. But Plaintiffs have also named the Board itself as a Defendant. [*Id.* at 1–2]. Plaintiffs’ claims against the individual DeKalb County Defendants in their official capacities are duplicative of their claims against the entity they represent and should be dismissed. *Graham*, 473 U.S. at 166.

Accordingly, because they are duplicative of the claims against the Board, the claims against Nancy Jester, Susan Motter, Vasu Abhiraman, Anthony Lewis, and Karli Swift should be dismissed.

LOCAL RULE 7.1D CERTIFICATE

This submission was prepared using Century Schoolbook 13-point font.

Respectfully submitted this 21st day of March, 2024.

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CERTIFICATE OF SERVICE

I filed the above document with the Court's CM/ECF System, which will send electronic notification to all counsel of record.

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