

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

|   |   |                       |
|---|---|-----------------------|
| VOTE.ORG, <i>et al.</i> ,                     | ) |                       |
|   | ) |                       |
|   | ) |                       |
| Plaintiffs,                                   | ) | CIVIL ACTION FILE     |
|   | ) |                       |
| v.  | ) | NO: 1:22-CV-01734-JPB |
|   | ) |                       |
| GEORGIA STATE ELECTION BOARD, <i>et al.</i> , | ) |                       |
|   | ) |                       |
|   | ) |                       |
| Defendants,                                   | ) |                       |

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**DEFENDANTS FULTON COUNTY BOARD OF REGISTRATION AND  
ELECTIONS, PATRISE PERKINS-HOOKER, AARON V. JOHNSON,  
MICHAEL HEEKIN, AND TERESA K. CRAWFORD’S RESPONSE TO  
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT AND STATE  
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

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COME NOW, Defendants Fulton County Board of Registration and Elections, Patrise Perkins Hooker, Aaron V. Johnson, Michael Heekin, and Teresa K. Crawford (the “Fulton County Defendants”), and file this response to Plaintiffs’ Motion for Summary Judgment and State Defendants’ Motion for Summary Judgment.

**BACKGROUND**

On November 7, 2023, Plaintiffs filed their First Amended Complaint against the State Defendants, the Fulton County Defendants, the DeKalb County Board of

Registration and Elections, Nancy Jester, Susan Motter, Vasu Abhiraman, Anthony Lewis, and Karl Swift, in their official capacities as members of the DeKalb County Board of Registration and Elections (the “DeKalb County Defendants”). [Doc. 96].

In their and First Amended Complaint, Plaintiffs challenge Georgia’s election law, specifically O.C.G.A. § 21-2-381(a)(1)(C)(i), which requires absentee-ballot applicants to sign the requisite oath by hand in pen and ink, affirming that the applicants are qualified and have given accurate information on their application (the “Pen and Ink Rule”). [Doc 96]. Plaintiffs allege that the Pen and Ink Rule violates the materiality provision of 52 U.S.C. § 10101(a)(2)(B). As such, Plaintiffs request that this Court to: (1) declare that the Pen and Ink Rule violates the materiality provision; (2) enjoin all Defendants from implementing, enforcing, or giving any effect to the Pen and Ink Rule; and (3) award Plaintiffs their costs, disbursements, and reasonable attorneys’ fees. [Doc. 96, p. 20].

On March 7, 2024, Plaintiffs filed a Motion for Summary Judgement stating that Plaintiffs have standing to bring their claims against the Fulton County Defendants because the alleged injuries to Plaintiffs are traceable to the Fulton County Defendants who are required by law to enforce the Pen and Ink Rule mandated by Georgia law. [Doc 159-1, pp. 13-14]. On the same date, the State Defendants filed a Motion for Summary Judgement arguing that any alleged injuries suffered by Plaintiffs due to the Pen and Ink Rule are traceable to the counties, and

not the State. [Doc 156-1, pp. 15-16].

The Fulton County Defendants file this response to show that: (I) Plaintiffs’ alleged injuries are not traceable to the Fulton County Defendants; and (II) the Fulton County Defendants should not be liable for costs, disbursements, and reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988.

### **ARGUMENT AND CITATION OF AUTHORITY**

#### **I. Plaintiffs’ Injuries Are Not Traceable to the Fulton County Defendants.**

A “plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought.” *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 581 U.S. 433, 434, 137 S. Ct. 1645, 1647, 198 L. Ed. 2d 64 (2017) (cit omit). Here, Plaintiffs have one claim against the Fulton County Defendants –that the Fulton County Defendants violated the materiality provision of 52 U.S.C. § 10101(a)(2)(B) by enforcing Georgia’s Pen and Ink Rule. (Doc. 96, pp. 16-17). Plaintiffs, however, cannot establish standing against the Fulton County Defendants for the said claim. *See infra.*

To establish standing, Plaintiffs must demonstrate that the injuries are traceable to the Fulton County Defendants. *Jacobson v. Florida Sec’y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020). Here, Plaintiffs and the State Defendants assert that the alleged harm suffered by Plaintiffs are traceable to Georgia’s counties, including Fulton County. [Doc 159-1, pp. 13-14]; [Doc 156-1, pp. 15-16]. However,

this assertion is factually and legally incorrect.

Although the Fulton County Defendants enforce the Pen and Ink Rule, this enforcement is required by Georgia state law and the Fulton County Defendants are bound to follow Georgia law in administering elections. [Doc. 175, 88:9-19 (corporate representative of the Fulton County Defendants testifying that the Fulton County Defendants are required to follow the Georgia election law, including the Pen and Ink Rule)]; O.C.G.A. § 21-2-212; *see also* O.C.G.A. §21-2-50.

Hence, the Fulton County Defendants are not the cause of any alleged harm suffered by Plaintiffs, and Plaintiffs cannot show that their alleged injuries are traceable to the Fulton County Defendants. *See Curling v. Raffensperger*, 1:17-CV-2989-AT, 2023 WL 7463462, at \*40 (N.D. Ga. Nov. 10, 2023) (finding that the plaintiffs' injuries from the ballot marking device ("BMD") election system "are not traceable to the Fulton County Defendants," despite the Fulton County Defendants using the BMD election system, because "the Fulton County Defendants are not responsible for the State's choice of voting system"); *see also Bethesda Lutheran Homes & Servs., Inc. v. Leean*, 154 F.3d 716, 718 (7th Cir. 1998) ("When the municipality is acting under compulsion of state or federal law, it is the policy contained in that state or federal law, rather than anything devised or adopted by the municipality, that is responsible for the injury"); *see also Doby v. DeCrescenzo*, 171 F.3d 858, 868 (3d Cir. 1999) (when a county is merely enforcing state law, without

adopting any particular policy of its own, it cannot be held liable under *Monell*). Accordingly, this Court should find that any alleged injuries are not traceable to the Fulton County Defendants, and that Plaintiffs do not have standing against the Fulton County Defendants.

## **II. The Fulton County Defendants Should Not Be Liable for Costs, Disbursements, and Attorneys' Fees.**

In the First Amended Complaint, Plaintiffs request that this Court award Plaintiffs their costs, disbursements, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988. "The purpose of the Attorney's Fees Awards Act [42 U.S.C. § 1988] is to ensure the effective enforcement of the civil rights laws, by making it financially feasible to litigate civil rights violations." *Dowdell v. City of Apopka, Florida*, 698 F.2d 1181, 1189 (11th Cir. 1983). "Recognizing that the expense of litigating a civil rights suit would often prevent individuals from seeking to enforce their rights, Congress decided that those who violate the civil rights laws, not the victims of those violations, should bear the costs of vindicating the civil rights." *Doe v. Busbee*, 684 F.2d 1375, 1379 (11th Cir. 1982) (emphasis added).

However, here, the Fulton County Defendants did not violate Plaintiffs' civil rights. Instead, the Fulton County Defendants faithfully followed Georgia law, as they were required to do. [Doc. 175, 88:9-19]; O.C.G.A. § 21-2-212. As the legislative history of 42 U.S.C. § 1988 indicates, the award of attorney's fees and costs were meant for private citizens to be able to recover what it costs them to

vindicate their civil rights from “those **who violate** the nations fundamental laws.” S.Rep.No.94-1011, 94th Cong., 2d Sess., 2, reprinted in (1976) U.S. Code Cong. & Adm. News 5910 (emphasis added). Therefore, in instances, like the present one, where the defendants are not responsible for passing the challenged law, but merely administering it, as statutorily required, plaintiffs should not be able to collect attorneys’ fees and costs against such defendants. Accordingly, in the present case, Plaintiffs should not be able to recover attorney’s fees and costs from the Fulton County Defendants because they did not pass the Pen and Ink Rule, but merely applied it as required by law.

Likewise, the U.S. Supreme Court has noted that “[t]here is no cause of action against a defendant for fees absent that defendant’s liability for relief on the merits.” *Kentucky v. Graham*, 473 U.S. 159, 170, 105 S.Ct. 3099, 3107 (1985). This Court has previously concluded that the relief Plaintiffs seek from the State Defendants would necessarily bind all counties in Georgia, whether or not any county officials were parties in this case. *Curling v. Kemp*, 334 F.Supp.3d 1303, 1318 (N.D. Ga. 2018). Hence, because the State Defendants had exclusive authority for the election procedures at issue, and Plaintiffs could have obtained the relief at issue without the presence of the Fulton County BRE, this Court cannot reasonably assess any of the attorneys’ fees at issue against the Members of the Fulton County BRE.

“The language of the Act [42 U.S.C. § 1988] itself unequivocally and

expressly makes the award of fees a question of discretion for the court.” *Morrow v. Dillard*, 580 F.2d 1284, 1300 (5th Cir. 1978) (citing to 42 U.S.C. § 1988). As such, given that the Fulton County Defendants were merely fulfilling their statutory duty in administering Georgia’s election laws, the Fulton County Defendants respectfully request that this Court exercise its discretion and deny Plaintiffs’ request for costs, disbursements, and reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988.<sup>1</sup>

### **CONCLUSION**

For the foregoing reasons, the Fulton County Defendants requests that this Court rule that Plaintiffs’ alleged injuries are not traceable to Fulton County Defendants and deny Plaintiffs’ request for costs, disbursements, and reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988.

Respectfully submitted this 11<sup>th</sup> day of April, 2024.

**OFFICE OF THE COUNTY  
ATTORNEY**

**Y. SOO JO**

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Chief Deputy County Counsel  
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<sup>1</sup> If the court is inclined to assess attorneys’ fees against the Fulton County Defendants, we request that the court apportion only 1/159 of the reasonable attorneys’ fees and expenses against them because the relief requested by Plaintiffs apply to all 159 boards of registration and elections in Georgia which the Fulton County Defendants could not provide or implement all of the relief sought by Plaintiffs.

**/s/ Juliana Sleeper**

Juliana Sleeper

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## CERTIFICATE OF COMPLIANCE

Under L.R. 7.1 (D), the undersigned hereby certifies that the foregoing has been prepared in Times New Roman 14, a font type section approved by the Court in L.R. 5.1(C).

**/s/ Juliana Sleeper**

Juliana Sleeper

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## CERTIFICATE OF SERVICE

I hereby certify that I have on this date I have electronically filed a copy of the foregoing *Defendants Fulton County Board of Registration and Elections, Patrise Perkins-Hooker, Aaron V. Johnson, Michael Heekin, and Teresa K. Crawford's Response to Plaintiffs' Motion for Summary Judgment and State Defendants' Motion for Summary Judgment* with the Clerk of Court using CM/ECF system, which will automatically send e-mail notification of such filing to all counsel of record.

This 11<sup>th</sup> day of April, 2024.

**/s/ Juliana Sleeper**

Juliana Sleeper

Senior Assistant County Counsel

Georgia Bar Number: 376099

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