

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 REPLY IN
SUPPORT OF THEIR 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 Reply in Support of their Motion for Summary Judgment (Doc. 178).¹

¹ The DeKalb County Defendants also adopt and incorporate the reply brief of the State Defendants insofar as it supports the arguments that the DeKalb County Defendants previously joined. [See Doc. 178 at 1].

The individual members of the DeKalb County Board of Registration and Elections should be dismissed. Plaintiffs' argument to the contrary is confusing at best.

Plaintiffs argue that sovereign immunity could bar their claim if it were lodged solely against the DeKalb County Board of Registration and Elections. [Docs. 191 at 36; 196-3 at 36]. But Plaintiffs cite no authority supporting this claim. Rather, they cite a case that held § 1983 money damages were barred by Eleventh Amendment immunity while injunctive relief was not barred. [Docs. 191 at 35-36; 196-3 at 35-36 (citing *Cross v. State of Ala., State Dept. of Mental Health & Mental Retardation*, 49 F.3d 1490, 1503 (11th Cir. 1995))]. But that case arose from workplace discrimination by the director of a state mental facility against employees—not the enforcement of state law by local authorities. *Cross*, 49 F.3d at 1494–1500. Moreover, the duplicity argument being made here was not made by the defendants in *Cross*, making that case irrelevant.

In any event, the argument that sovereign immunity could somehow bar Plaintiffs' claim is without support; it is well-established that sovereign immunity will not bar a claim for injunctive relief when the remedy is to enjoin an official state policy. *Ex Parte Young*, 209 U.S. 123 (1908).

Plaintiffs concede that the Eleventh Circuit has affirmed dismissal of official capacity claims against individuals when identical claims were

asserted against the entity that those individuals represent. [Doc. 191 at 36; 196-3 at 36 (citing *Busby v. City of Orlando*, 931 F.2d 764, 787 (11th Cir. 1991))]. And it is also common practice to do so in this District and throughout the Eleventh Circuit. *See, e.g., Ponder v. Reyes*, 2023 WL 10474472 (N.D. Ga. April 28, 2023); *Jenkins v. Fulton Cnty., Ga.*, 2019 WL 13411501 (N.D. Ga. June 10, 2019); *Streeter v. Dept. of Public Safety*, --- F.Supp.3d ---, 2023 WL 5532186 (S.D. Ga. Aug. 28, 2023); *Zachery v. Coosa Cnty. Bd of Ed.*, 2019 WL 4054965 (M.D. Ala. Aug. 27, 2019); *Killmon v. City of Miami*, 2005 WL 8155912 (S.D. Fla. Mar. 22, 2005); *Daniel v. Huntsville City Bd. of Ed.*, 2017 WL 1282319 (N.D. Ala. April 6, 2017).

Moreover, Supreme Court authority makes clear that “[t]here is no longer a need to bring official-capacity actions against local government officials [because] local government units can be used directly for damages and injunctive or declaratory relief.” *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985). Plaintiffs, without mentioning *Graham*, argue that the individual DeKalb Defendants are appropriate parties, in part because Plaintiffs’ claims are only for injunctive relief. But that distinction does not matter; the claims are still redundant.

In sum, the official capacity claims against the individual DeKalb Defendants are duplicative of the claim against the entity that they represent, the DeKalb County Board of Registration and Elections. Accordingly, the

claims against Nancy Jester, Susan Motter, Vasu Abhiraman, Antohny 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 2nd day of May, 2024.

HALL BOOTH SMITH, P.C.

/s/ R. David Ware

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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.

Respectfully submitted this 2nd day of May, 2024.

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