UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NEW GEORGIA PROJECT, *et al.*, *Plaintiffs*, v. BRAD RAFFENSBERGER, *et al.*, *Defendants*.	Case Nos. 1:24-cv-03412-SDG (lead) 1:24-cv-04287-SDG 1:24-cv-04659-SDG

REPUBLICAN INTERVENORS' BRIEF IN SUPPORT OF MOTION TO DISMISS

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INTRODUCTION

The Georgia Legislature adopted Senate Bill 189 to address real concerns with voter registration. Section 4 of the bill gives voters without a permanent address a place to collect election mail at their county registrar's office. Section 5 amends Georgia's voter-initiated elector-contest process by defining the statutory term "probable cause." Registrars now have "probable cause" to sustain a voter challenge if, among other things, a voter is registered at a non-residential address as confirmed by a government source.

Plaintiffs—consisting almost entirely of private interest groups—brought wide-ranging challenges to Georgia's newest election-integrity measures. But most of their claims fail as a matter of law. Their NVRA claims fail because the NVRA applies only to voter registration list-maintenance programs, not to rules such as those in S.B. 189. And their Civil Rights Act claim fails because the plain text prohibits discrimination against "individuals"—it does not prohibit treating different types of evidence and information differently. Consistent with their pledge to reduce duplicative briefing, Intervenors focus on the Plaintiffs' statutory claims in Counts I, II, III, IV, V, and XII. The Court should dismiss those claims.

FACTUAL BACKGROUND

This consolidated case started with three separate suits brought by private organizations against Georgia's Secretary of State, State Election Board,

and various county boards of registrars. The Court consolidated these cases for pretrial purposes. Doc. 137 at 2. And the Court granted the Republican National Committee and Georgia Republican Party's motion to intervene as Defendants, noting that their "distinct viewpoint as major-political party organizations may aid the Court's analysis." Doc. 154 at 2.

Plaintiffs filed their consolidated complaint on December 17, 2024. Doc. 155 at 1-7, 22. The new complaint challenges two amendments to Georgia's Election Code made by Sections 4 and 5 of S.B. 189, enacted on May 6, 2024. 2024 Ga. Laws Act 697. Section 4 amends Georgia's rules for determining residence (O.C.G.A. §21-2-217(a)(1)), establishing that the election mail address for voters without a permanent address shall be their county registrar's office. *Id*. Section 5 amends Georgia's voter-initiated elector-contest process (O.C.G.A. §21-2-230(a)) by defining the statutory term "probable cause." *Id*. Under this process, once a voter challenges the right to vote of another voter, the county "board of registrars" determines whether "probable cause exists" to sustain the challenge, and if so, conducts a "hearing." O.C.G.A. §21-2-230. Section 5 defines "probable cause" for these voter challenges to include an elector "voting or registering" in another jurisdiction, obtaining a homestead exemption in another jurisdiction, or registering at a nonresidential address as confirmed by a government source. 2024 Ga. Laws Act 697 §5.

Plaintiffs allege that these two sections of Georgia's Election Code are preempted by the NVRA (Counts I-V), are unconstitutional (Counts VI-XI), and that Section 5 violates the Civil Rights Act (Count XII). Doc. 155 at 95-132. The consolidated complaint also adds several new Plaintiffs and Defendants. The Court ordered responses by January 17, 2025. *See* Doc. 142.

STANDARD OF REVIEW

"A pleading fails to state a claim if it does not contain allegations that support recovery under any recognizable legal theory." *Williams v. Fulton Cnty. Sch. Dist.*, 181 F. Supp. 3d 1089, 1110 (N.D. Ga. 2016). "To survive dismissal," the complaint's allegations must "plausibly" show that Plaintiffs have "a right to relief," above "a speculative level; if they do not, the plaintiff's complaint should be dismissed." *James River Ins. v. Ground Down Eng'g,* 540 F.3d 1270, 1274 (11th Cir. 2008).

ARGUMENT

I. Plaintiffs' NVRA claims fail as a matter of law.

The NVRA requires States to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters" due to "death" or a "change in the residence of the registrant." 52 U.S.C. §20507(a)(4). In compliance with that provision, Georgia has established a detailed list-maintenance "program." *Id.* Section 21-2-231 of Georgia's Election Code requires various state offices to periodically share voter-

registration information with each other. Section 21-2-232 details the process for removing voters from the rolls due to residency changes. And Section 21-2-232 gives the Secretary authority to use change-of-address information supplied by the U.S. Postal Service to identify voters who have changed residences. Plaintiff challenge none of these provisions. And they challenge no part of Georgia's list-maintenance "program." 52 U.S.C. §20507(a)(4).

Instead, Plaintiffs take aim at other portions of Georgia's Election Code. They claim that the NVRA preempts S.B. 189's procedures for handling challenges to a voter's qualifications. *See* O.C.G.A. §21-2-230. And they claim it preempts S.B. 189's requirement that voters without a permanent address receive election mail at their county "registrar's office." *Id.* §21-2-217(a)(1.1). But the NVRA doesn't apply to these state laws. Neither Georgia's elector-challenge rules nor its mailing accommodations are subject to the NVRA, because neither is a systematic "general program" for list "maintenance." 52 U.S.C. § 20507. The Court should thus dismiss the Plaintiffs' NVRA claims.

A. S.B. 189's elector-challenge rules do not violate the NVRA.

Plaintiffs claim in Counts I, II, and III that various aspects of Georgia's elector-challenge process violate the NVRA. All claims fail for the basic reason that individualized elector contests are not subject to the NVRA. These voter-initiated challenges are neither a "general program" conducted by the State,

52 U.S.C. §20507(a)(4), nor are they designed for the systematic "maintenance" of the State's voter rolls, *id.* §20507(b). The NVRA doesn't apply.

To start, Georgia's elector challenges are not a "general program" that must comply with the NVRA. Rather, each is an individual voter-initiated "pre-election contest regarding a particular election." *Cook v. Bd. of Registrars of Randolph Cnty.*, 291 Ga. 67, 71 (Ga. 2012). The term "program" in the NVRA refers to the "general program" the NVRA requires States to create to maintain "an accurate and current voter registration roll." 52 U.S.C. §20507(a)(4). The NVRA does not address elector challenges brought by individual voters. Georgia's elector-challenge process thus does not fall within the scope of the NVRA. *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 722 (S.D. Miss. 2014) ("Congress did not intend the NVRA to regulate … election challenges.").

Plaintiffs mistakenly assume that Georgia's elector-challenge process in O.C.G.A. §21-2-230 is Georgia's voter list-maintenance program. But the State's list-maintenance program is governed by different provisions in the Georgia Code. Sections 21-2-231 to 21-2-233 detail how to "systematically remove the names of ineligible voters from the official lists of eligible voters." 52 U.S.C. §20507(c)(2)(A). But under the S.B. 189 process, voters challenge the "vote[s]" of other electors. O.C.G.A. §21-2-230.

Neither is Georgia's elector-challenge process a "maintenance" program. 52 U.S.C. §20507(b). The NVRA requires that each State conduct a voter list

"maintenance" program to ensure their rolls are "accurate and current." *Id.* But the elector-challenge process is not routine "maintenance" of the voter rolls. It is a voter-initiated procedure to challenge the right of another "elector of the county or municipality" to vote in a specific election. O.C.G.A. §21-2-230(a). Georgia thus could not satisfy the NVRA's requirement to conduct a "general program" by relying on the voter-challenge process alone, because whether challenges are brought is within the discretion of individual Georgia residents, not the State. Because Georgia's elector-challenge process is not a regularly occurring "maintenance" program, it is not subject to the NVRA.

1. The NVRA's residency-change requirements do not preempt S.B. 189's probable-cause provisions.

Plaintiffs allege in Count I that S.B. 189's definition of "probable cause" is "preempted" by the NVRA "because it causes removal outside of the exclusive method of removal for change of residence" in Section 8(d) of the NVRA. Doc. 155 at 97. The claim fails as a matter of law for three reasons.

First, a finding of "probable cause" under Georgia's elector-challenge process does not "cause removal." Section 8(d) of the NVRA applies only when a State "remove[s] the name of a registrant from the official list of eligible voters." 52 U.S.C. §20507(d). But a finding of "probable cause" under Georgia's elector-challenge process "determines nothing about a voter's eligibility to vote, nor does it have an immediate impact of removing a voter from a registration

list." *Fair Fight Inc. v. True the Vote*, 710 F. Supp. 3d 1237, 1287 (N.D. Ga. 2024). Rather, a hearing must be conducted to determine the merits of the challenge. O.C.G.A. §21-2-230(c). This stage allows a voter to respond to a challenge by "confirm[ing] in writing that the registrant has changed residence." 52 U.S.C. §20507(d)(1)(A). Plaintiffs all but admit that removing a voter who "confirms" her residency change doesn't offend the NVRA. *See* Doc. 155 ¶273. Even if a voter disputes the challenge, and the registrars uphold the challenge, the voter "may appeal the decision" to a superior court. O.C.G.A. §21-2-230(g)-(i). Since a finding of "probable cause" under Georgia's elector-challenge process does not "cause removal," Georgia's definition of "probable cause" is not subject to the NVRA.

Second, S.B. 189 satisfies the NVRA's provision allowing States to remove voters for "changed residence" if the voter "confirms in writing" that he "has changed residence." 52 U.S.C. §20507(d)(1)(A). Both "voting" and "registering to vote in a different jurisdiction," O.C.G.A. §21-2-216(a), are confirmations "in writing" that the voter has changed residence, 52 U.S.C. §20507(d)(1)(A). Indeed, "the very act of filling out a form to register in another county is by itself a written confirmation of the fact that a voter has changed residence." *Ariz. All. for Retired Ams. v. Mayes*, 117 F.4th 1165, 1187 (9th Cir. 2024) (Lee, J., concurring). "[T]here is no conflict" between the NVRA and Georgia law. *Id.* at 1188-89.

Third, the NVRA doesn't prohibit States from removing voters who were never eligible to begin with. Removing a voter from the rolls because of a "change of residence" is different from removing a voter due to "initial ineligibility." *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 775 (2018). "In creating a list of justifications for removal, Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place." *Bell v. Marinko*, 367 F.3d 588, 591-92 (6th Cir. 2004). The probable-cause requirement doesn't distinguish between the two, but the NVRA does. S.B. 189 provides simply that "an elector voting or registering to vote in a different jurisdiction" is probable cause to sustain a challenge. O.C.G.A. §21-2-230(b). A registered Georgia elector who votes in a Florida election would trigger the probable-cause provision. But if that voter was never a Georgia resident to begin with, removing his name from the rolls wouldn't trigger the "changed residence" procedures in the NVRA. 52 U.S.C. §20507(d)(1). Instead, he would be removed due to his "initial ineligibility." *Husted*, 584 U.S. at 775. Plaintiffs' facial challenge to the probable-cause requirement fails because it doesn't distinguish between the different reasons for removal.

2. S.B. 189's probable-cause provisions do not violate the NVRA's uniformity requirement.

Plaintiffs allege in Count II that S.B. 189's definition of "probable cause" violates the NVRA's uniformity and nondiscrimination provisions. Doc. 155 at 99-103. But the definition "appl[ies] to everyone involved in the process" of elector challenges in Georgia, not merely a "*selected class*." *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 703 (N.D. Ohio 2006). "Any elector" may bring a voter challenge, and registrars are required to apply the same "probable cause" criteria in every elector challenge. O.C.G.A. §21-2-230(a). The probable-cause criteria are simply "evidence that a registrant has moved." *Husted*, 584 U.S. at 775. They are not by themselves "a ground for removal" without further proceedings. *Id.*

Georgia's definition of "probable cause" is also non-discriminatory. "The term 'nondiscriminatory'" in the NVRA "is intended to mean that the procedure complies with the requirements of the Voting Rights Act of 1965." S. Rep. No. 103-6, at 31; H.R. Rep. No. 103-9, at 14-15. Georgia's definition of "probable cause" does not violate the Voting Rights Act by discriminating "on account of race." 52 U.S.C. §10301(a). Although Plaintiffs cite some racial statistics, *see* Doc. 155 at 77-78, they don't allege that the probable-cause provisions discriminate based on race, *see id.* at 99-103.

Even if the NVRA's "non-discriminatory" language could be read to include other types of discrimination, Georgia's "probable cause" definition is still not discriminatory. It does "not treat similarly situated voters differently based on irrelevant characteristics" by allowing for "probable cause" to challenge voters registered at a nonresidential address. *Ohio A. Phillip Randolph Inst. v. Husted*, 2016 WL 3542450, at *10 (S.D. Ohio), *rev'd on other grounds*, 838 F.3d 699 (6th Cir. 2016). Under Georgia law, residency is a voter qualification. O.C.G.A. §21-2-216(a)(4). Georgia "has the right to require" that all persons registered "to vote be bona fide residents of the community," *Carrington v. Rash*, 380 U.S. 89, 93-94 (1965), and the State "is free to take reasonable steps" to see that all registrants "actually fulfill the requirement of bona fide residence," *Bell*, 367 F.3d at 592. Georgia law prohibits persons from claiming residence at non-residential addresses such as "a post office box or private mailbox service address." O.C.G.A. §21-2-217(a)(2)(C). The residency criteria for Georgia's "probable cause" definition reflect the reality that a non-residential address listed on a registration is prima facie evidence that the registrant does not reside in the jurisdiction. Since residency is a neutral voter qualification, using it as a "'trigger'" for voter challenges is "nondiscriminatory." *See Mi Familia Vota v. Fontes*, 719 F. Supp. 3d 929, 999-1000 (D. Ariz. 2024) (upholding proof-of-citizenship requirement under the NVRA's uniformity clause because

citizenship is a non-discriminatory voter qualification). For each of these reasons, Count II fails as a matter of law.

B. S.B. 189's mailing accommodations do not violate the NVRA's nondiscrimination provision.

S.B. 189 permits voters "without a permanent address" to receive election-related mail at their county "registrar's office." O.C.G.A. §21-2-217(a)(1.1). Plaintiffs allege in Count IV that the provision violates the NVRA's uniformity requirement. Doc. 155 at 105, 133. But establishing a place to receive election mail for voters without a permanent address is not a voter list maintenance "program." 52 U.S.C. §20507(b). Ensuring that every voter has a permanent address to receive election mail does not remove anyone from the rolls or even modify a program established for that purpose. The provision thus falls outside the scope of the NVRA's uniformity section. The "general limitations" of that section are only "applicable to state removal programs." *Husted*, 584 U.S. at 764.

The NVRA is not a general anti-discrimination law. Even if it were, Count IV fails for the same reasons Plaintiffs' other discrimination claims fail: Plaintiffs don't claim that S.B. 189's mailing accommodations for homeless voters discriminate based on race. *See* 52 U.S.C. §10301(a). And even if the NVRA were broader than the Voting Rights Act, residency is a basic qualification to

vote in Georgia. *See* O.C.G.A. §21-2-216(a)(4). Count IV thus fails as a matter of law.

C. S.B. 189's mailing accommodations do not violate the NVRA's notice provisions.

The NVRA requires that election officials notify "each applicant of the disposition of the application." 52 U.S.C. §20507(a)(2). And it permits States to remove certain voters who have not responded to change-of-address notices. *Id.* §20507(c)(1)(B). Plaintiffs claim in Count V that these NVRA provisions preempt S.B. 189's mailing accommodation for voters "without a permanent address" to receive election-related mail at their county "registrar's office." O.C.G.A. §21-2-217(a)(1.1); *see* Doc. 155 at 106-08. But the NVRA says nothing about how or where notice is required.

That the NVRA requires notice does not preempt a state law detailing how that notice is to be accomplished. Plaintiffs don't claim that "it is physically impossible to comply with both the federal and the state laws" or that "the state law stands as an obstacle to the objective of the federal law." *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1167 (11th Cir. 2008). Nor could they. S.B. 189 does not prevent any required NVRA notice from being sent. To the contrary, S.B. 189 facilitates the NVRA's notice requirements by directing *where* the NVRA notices are to be sent for voters without a permanent address. O.C.G.A. §21-2-217(a)(1.1).

Plaintiffs acknowledge that Georgia officials already provide voters with proper NVRA notices. Doc. 155 at 107. Under Georgia's permanent-address requirement, these notices are just sent to a new address, the county registrar's office. O.C.G.A. §21-2-217(a)(1.1). Plaintiffs would amend the NVRA's notice requirement into "a least-restrictive-alternative test" for notice. *Browning*, 522 F.3d at 1175 (rejecting a similar statutory argument in the Civil Rights Act). But nothing in the NVRA requires the most convenient form of notice for a particular voter. Plaintiffs fail to "identif[y]" any "conflict" between Section 4 and the NVRA. *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 884 (2000). The Court should dismiss Count V.

II. Plaintiffs' Civil Rights Act claim fails as a matter of law.

Under S.B. 189, "probable cause" to sustain a voter challenge includes "an elector being registered at a nonresidential address as confirmed or listed by or in a government office, data base, website, or publicly available sources derived solely from such governmental sources." O.C.G.A. §21-2-230. Plaintiffs claim in Count XII that sustaining a voter challenge because a voter is registered at a nonresidential address violates the Civil Rights Act by applying a different "standard, practice, or procedure" to "individuals within the same county" from those "who have been found by State officials to be qualified to vote." 52 U.S.C. §10101(a)(2)(A).

But §10101(a)(2)(A) requires state officials to treat *people* equally. It does not preempt state laws that treat different evidence and information differently. The whole point of the Civil Rights Act was to stop arbitrary racial discrimination. *Frazier v. Callicutt*, 383 F. Supp. 15, 20 (N.D. Miss. 1974) (finding §10101 violation where official consistently rejected registrations only from black students living on college campuses). But there's nothing arbitrary about acknowledging a nonresidential address as evidence that the voter might not be a resident. Plaintiffs also don't allege that it has anything to do with racial discrimination. Their claim fails for both reasons.

A. S.B. 189's "probable cause" standard regulates evidence, not individuals.

The Civil Rights Act forbids applying different qualification standards to different "individuals" within the same county. 52 U.S.C. §10101(a)(2)(A). But the probable-cause criteria that Plaintiffs challenge applies the same standard to all "individuals." Residency is a basic qualification to vote under Georgia law. *See* O.C.G.A. §21-2-216(a)(4). Every voter must show proof of residency the first time they register to vote. *See id.* §§21-2-220(c), -417(c); And that residency must be ongoing while the voter remains registered. *See id.* §21-2-217. The probable-cause criteria identify evidence that an individual does not meet these requirements. These standards apply uniformly across the State.

A voter's residency can change. But a residential address on a voter file is prima facie evidence that the "person's habitation is fixed, without any present intention of removing" from the State. O.C.G.A §21-2-217(a)(1). By contrast, a voter who supplies a nonresidential address has provided no evidence of the voter's continued "habitation" in the State. *Id.* By looking to this evidence, the probable-cause criteria apply the same *standard* to each voter. One has supplied evidence of continued residency, while the other has not. *See Ballas v. Symm*, 494 F.2d 1167, 1171-72 (5th Cir. 1974) (issuing a questionnaire to voters when the registrar was uncertain of voter's residency status did not violate §10101(a)(2)(A) because "[t]he standard for registration is the same for all applicants"); *Davis v. Commonwealth Election Comm'n*, 2014 WL 2111065, at *25 (D.N.M.I. May 20, 2014) (requirement that voters seeking to vote in certain elections sign an affidavit attesting that they are native Islanders and hence eligible to vote in that election did not violate §10101(a)(2)(A)).

Plaintiffs' claim would invalidate innumerable common-sense registration laws that treat different forms of evidence differently. *Ind. Dem. Party v. Rokita*, 458 F. Supp. 2d 775, 840 (S.D. Ind. 2006) (similar interpretation would require "abolishing all requirements which uniquely apply to only one set of voters"), *aff'd sub nom. Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008). First-time voters, for example, "must present current and valid identification either when registering to vote by

mail." O.C.G.A. §21-2-220(c). Some voters are exempt from that requirement, such as those "entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act." *Id.* §21-2-220(c)(2). Voters ordinarily must "provide his or her Georgia driver's license number or identification card number." *Id.* §21-2-220.1(a). But voters who don't have that information can "provide the last four digits of his or her social security number." *Id.* And if a voter doesn't have a social security number, she can "affirm this fact … upon penalty of law." *Id.* Each of these rules provides different procedures not to different "individuals," 52 U.S.C. §10101(a)(2)(A), but to different circumstances, evidence, and information available. Plaintiffs would upset all of these accommodations, requiring rigid uniformity in the election code.

Neither text nor caselaw supports Plaintiffs' strict interpretation. "It is not a violation of subsection (A) for a state to apply different standards to two inherently different procedures." *Gonzalez v. Arizona*, 2006 WL 8431038, at *8 (D. Ariz. Oct. 12, 2006). Plaintiffs' interpretation, however, would require abolishing different procedures for voting that only apply to some voters, including absentee voting or advance voting. *Common Cause/Ga. League of Women Voters of Ga. v. Billups*, 439 F. Supp. 2d 1294, 1357 (N.D. Ga. 2006). That Plaintiffs' proposed interpretation of §10101 would invalidate "vast portions of Georgia's election statutes" is good evidence that it's wrong. *Id.*

B. Plaintiffs don't allege that Defendants discriminated on the basis of race.

Plaintiffs' §10101 claim fails for another reason: they do not allege that the probable-cause requirements discriminate based on race. Congress enacted §10101 as part of the Civil Rights Act of 1964 "under the authority of the Fifteenth Amendment to enforce that Amendment's guarantee." *United States v. Mississippi*, 380 U.S. 128, 138 (1965) (citing 42 U.S.C. §1971, recodified at 52 U.S.C. §10101). "[W]ell-settled law establishes that [§10101] was enacted pursuant to the Fifteenth Amendment for the purpose of eliminating racial discrimination in voting requirements." *Ind. Democratic Party*, 458 F. Supp. 2d at 839.

Courts have thus held that §10101 claims "fail as a matter of law" when they "do not allege that the actions by [election] officials were racially motivated." *Broyles v. Texas*, 618 F. Supp. 2d 661, 697 (S.D. Tex. 2009); *see also Ind. Democratic Party*, 458 F. Supp. 2d at 839 (similar); *Voto Latino v. Hirsch*, 712 F. Supp. 3d 637, 662 (M.D.N.C. 2024) (denying preliminary injunction under §10101(a)(2)(A) because the suit lacked "any allegation of discrimination against a protected class"). Text and precedent support those rulings.

The plain text of §10101 requires evidence of racial discrimination to claim a violation. Section 10101 begins by guaranteeing "[a]ll citizens" the right to vote "without distinction of race, color, or previous condition of

servitude." 52 U.S.C. §10101(a). Paragraph (a)(2) implements that race-neutral guarantee by, among other things, forbidding disparate "standards, practices, or procedures" to determine whether "individuals" are qualified to vote "under State law." *Id.* §10101(a)(2). And the term "qualified under State law" "shall not, in any event, imply qualifications more stringent than those used by the persons found … to have violated subsection (a) in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist." *Id.* §10101(e) (emphasis added).

That is, a person "violate[s] subsection (a)" by applying "more stringent" voter qualifications to a person of one "race or color" than to persons of another "race or color." *Id.* If that racial discrimination is part of a larger "pattern or practice," courts have special remedial power to receive "application[s]" from "any person of such race or color" affected by the pattern or practice, and issue orders "declaring [them] qualified to vote." *Id.* The remaining sections lay out remedies, jurisdiction, and procedures. This text confirms that the statute prevents racially discriminatory state action, not neutral voter-registration rules.

If there were any doubt that the statute requires evidence of racial discrimination, constitutional avoidance counsels interpreting the statute to require racial discrimination as an element. Because §10101 is an exercise of Congress's remedial powers under the Fifteenth Amendment, *Mississippi*, 380 U.S. at 138, the "statute's 'current burdens' must be justified by 'current

needs,'" *Shelby Cnty. v. Holder*, 570 U.S. 529, 550-51 (2013); *see also City of Boerne v. Flores*, 521 U.S. 507, 520 (1997) (Congress's exercise of its remedial power under the Fourteenth Amendment requires "a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end"). If Congress intended §10101 to sweep beyond racial discrimination, it must show that extraordinary remedy is justified by "current conditions." *Shelby Cnty.*, 570 U.S. at 554. But the "exceptional conditions" that might have justified such an "uncommon exercise of congressional power" in 1964 can no longer justify the application of §10101 without a showing of racial discrimination. *South Carolina v. Katzenbach*, 383 U.S. 301, 334 (1966). Extending §10101 beyond incidents of racial discrimination would thus be unconstitutional.

But the Court need not reach the constitutionality of §10101 if it recognizes that racial discrimination is a "necessary ingredient" of a §10101 violation. *City of Mobile, Ala. v. Bolden*, 446 U.S. 55, 62-64 (1980) (plurality op.). The Eleventh Circuit recognized that "[t]he text of the resulting statute, and not the historically motivating examples of intentional and overt racial discrimination, is … the appropriate starting point of inquiry in discerning congressional intent." *Browning*, 522 F.3d at 1173. But the court did not consider whether racial discrimination is a required element of §10101 claims, or the constitutional implications of extending the provision beyond racial

discrimination. Even the dissent in that case would have found a §10101 violation only because the registration requirement at issue was racially discriminatory and "frustrate[d]" Congress's intent to combat "burdensome state registration requirements to disenfranchise African–Americans." *Id.* at 1181 (Barkett, J., dissenting).

Even if a more expansive reading of §10101 were plausible, constitutional principles counsel construing §10101 consistent with the Fifteenth Amendment's prohibition on racial discrimination. *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1988) ("[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress."). Plaintiffs don't allege that Defendants discriminated on the basis of race, so their §10101 claims fail.

CONCLUSION

For the foregoing reasons, the Court should grant the motion to dismiss.

This 17th day of January, 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with Local Rule 5.1(B) because it uses 13-point Century Schoolbook.

/s/ *William Bradley Carver, Sr.*

CERTIFICATE OF SERVICE

On January 17, 2025, I e-filed this document on ECF, which will email everyone requiring service.

/s/ *William Bradley Carver, Sr.*