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' REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

Plaintiffs challenge measures enacted by the Georgia Legislature to ensure that voters are bona fide residents. The NVRA doesn't prohibit a State's "reasonable steps" to ensure that all persons registered to vote "actually fulfill the requirement of bona fide residence." *Bell v. Marinko*, 367 F.3d 588, 592 (6th Cir. 2004). Nor does the Civil Rights Act bar any state laws that treat different evidence and information differently and don't discriminate based on race. *Ind. Dem. Party v. Rokita*, 458 F. Supp. 2d 775, 839-40 (S.D. Ind. 2006).

Yet Plaintiffs argue that these statutes bar Georgia's common-sense efforts to ensure compliance with its legitimate registration requirements—and by extension many others. They rely on a boundless reading of the NVRA's requirement that "[a]ny State program or activity" used to maintain "an accurate" registration roll must be "uniform" and "nondiscriminatory." 52 U.S.C. §20507(b). And they rely on a similarly broad reading of the Civil Rights Act's prohibition of "any standard, practice, or procedure" that is "different" from

"other standards, practices, or procedures." *Id.* §10101(a)(2)(A). They urge this Court to adopt the broadest possible interpretation of these terms.

But that isn't how federal courts interpret statutes. "We do not look at one word or term in isolation," *United States v. DBB*, 180 F.3d 1277, 1281 (11th Cir. 1999), or give the statute "the broadest imaginable" interpretation, *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 523 (2018). Instead, this Court must do what Plaintiffs fail to do: keep the overall "statutory context" in mind and remember that Congress doesn't "hide elephants in mouseholes by altering the fundamental details of a regulatory scheme in vague terms." *Sackett v. EPA*, 598 U.S. 651, 675-77 (2023) (cleaned up). Because Plaintiffs' statutory claims (Counts I-V & XII) rest upon too "vast" a "construction" of federal law, *cf. Epic Sys.*, 584 U.S. at 523, those claims should be dismissed.

I. Section 8 of the NVRA does not preempt Georgia's elector contest procedures or mailing address requirement.

"At bottom this is a case about statutory interpretation." *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1167 (11th Cir. 2008). To plausibly allege preemption, Plaintiffs must show that there is a "textual conflict" between Georgia law and Section 8 of the NVRA. *Id.* at 1169. "[A]ll that matters is that no provision of the NVRA prohibits the legislature" from doing what it has done. *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 776 (2018).

Plaintiffs don't point to any textual conflict between the NVRA and Georgia law. No NVRA provision prohibits Georgia from establishing elector contest procedures. *See Bell*, 367 F.3d at 592. No NVRA provision prohibits Georgia from requiring that a voter produce evidence to demonstrate residency during an elector contest hearing. *See id*. No NVRA provision prohibits Georgia from removing a registrant who, after individualized inquiry, is determined to be a non-resident. *See id*. at 591-92; *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1348 (11th Cir. 2014). And no NVRA provision prohibits Georgia from establishing a county registrar's office as a voter's mailing address. Plaintiffs oppose Intervenors' motion to dismiss only by finding "elephants" in "mouseholes," doubling down on their argument that Congress "tucked an important expansion" of the NVRA into its "vague terms." *Contra Sackett*, 598 U.S. at 677 (cleaned up).

A. There is no textual conflict between Georgia law and Section 8(b) of the NVRA.

Plaintiffs first err by misconstruing the words "program or activity" to include a State's elector contest procedures and rules for determining residency. Doc. 228 at 49-50. "Congress did not intend" the terms "program" or "activity" to encompass "election challenges." *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 722 (S.D. Miss. 2014) (interpreting "programs and activities" in Section 8(i)); *see also PILF v. Boockvar*, 431 F. Supp. 3d 553, 560 (M.D. Pa. 2019) ("programs and activities" in Section 8(i) "aligns neatly" with "program

or activity" in Section 8(b)). Nor have Plaintiffs demonstrated that a State's rules for determining residency qualify as a "program or activity." To the contrary, residency is a voter qualification and "it would raise serious constitutional doubts" if the NVRA precluded States from setting rules to "enforce" this qualification. *Cf. Arizona v. Inter Tribal Council of Ariz.,* 570 U.S. 1, 17 (2013).

Plaintiffs respond that "Intervenors do not explain why" elector contest procedures or a mailing address requirement "would not" qualify as "a voter list maintenance 'program or activity'" under the NVRA. Doc. 228 at 55. But Intervenors spent several pages explaining that the term "program" refers to a procedure that is "systematically carried out in service of a specified end—maintenance of the voter rolls," and the term "activity" refers to "a specific action or function undertaken by the county registrars." *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1338 (N.D. Ga. 2016) (interpreting "programs and activities" in Section 8(i)); *see also Boockvar*, 431 F. Supp. 3d at 560 (terms in Section 8(i) "align neatly" with Section 8(b)); *True the Vote*, 43 F. Supp. 3d at 719. Plaintiffs' argument that "[t]here are no exceptions for individualized inquiries" ignores the ordinary meaning of "program or activity." Doc. 228 at 46.

Georgia's election contest procedures and mailing address requirement don't fit within the definition of either term. Georgia's election contest procedures are not "systematically carried out." *Contra Kemp*, 208 F. Supp. 3d at 1338. Those procedures are voter initiated, "pre-election contest[s] regarding a

particular election." *Cook v. Bd. of Registrars of Randolph Cnty.*, 291 Ga. 67, 71 (Ga. 2012). It is possible those procedures may never be invoked during an election cycle because bringing a voter challenge is within the sole discretion of Georgia residents, not the State. O.C.G.A. §21-2-230(a). Georgia's election contest procedures are also not carried out for voter roll "maintenance." *Contra* 52 U.S.C. §20507(b). Instead, under those procedures, voters challenge the "vote[s]" of other electors. O.C.G.A. §21-2-230(a).

Plaintiffs argue that "[c]ourts have already held" that the NVRA applies to "voter challenges." Doc. 228 at 47. But Plaintiffs cite only one out-of-circuit unpublished district court decision and a consent decree for support. *Id.* at 47-48. Neither is persuasive or binding, and neither discussed what "program or activity" means in the NVRA. This Court's previous definition of those terms should guide the Court again. *Kemp*, 208 F. Supp. 3d at 1338. Under that definition, Georgia's election contest procedures don't fit.

Likewise, Georgia's mailing address requirement is not a "program." *Contra id.* at 1337 (defining "program" as "system"). Nor is it an "activity." *Id.* at 1338 (defining "activity" as "a specific deed"). Georgia's mailing address requirement is a "rule[] for determining residence." O.C.G.A. §21-2-217. The purpose of this rule is to "determin[e] the residence of a person desiring to register to vote," *id.*, not voter roll "maintenance," 52 U.S.C. §20507(b). So Section 8(b)'s strictures don't apply. A rule for determining residence is not a "program" or

"activity," as this Court has defined those terms. *Kemp*, 208 F. Supp. 3d at 1338. Accordingly, the Court should dismiss Counts II and IV.

Plaintiffs next err by reading the term "nondiscriminatory" in Section 8(b) to prohibit States from considering residency information during the elector contest process. Doc. 228 at 51, 55. Even if the challenged provisions qualified as a "program or activity," courts haven't construed the term "nondiscriminatory" to bar States from considering evidence that is "relevant" in determining a voter's residency during elector contest proceedings. *Bell*, 367 F.3d at 593.

Plaintiffs argue that "[h]aving a nonresidential address is not legitimate prima facie evidence" of a registrant's residence. Doc. 228 at 53. But they cite no caselaw in support. "Bona fide residence may be determined" by any and all "factors that express such an intent." *Bell*, 367 F.3d at 593; *accord* O.C.G.A. §21-2-217(b). Even where a voter's spouse resides is "relevant" in determining that voter's residency. *Bell*, 367 F.3d at 593. Whether a voter lists that they live at a rented mailbox, post office box, or commercial address is likewise relevant. *Cf. Pepper v. Darnell*, 24 F. App'x 460, 461-62 (6th Cir. 2001) (rented mailbox); *Tex. State Lulac v. Elfant*, 629 F. Supp. 3d 527, 544-45 (W.D. Tex.) (P.O. box), *rev'd on other grounds*, 52 F.4th 248 (5th Cir. 2022). Evidence that a registrant is living at a non-residential address is relevant in determining residency because a voter is less likely to reside at a non-residential address. *Teel v. Darnell*, 2008 WL 474185, at *5-6 (E.D. Tenn. Feb. 20, 2008). And

residency is a nondiscriminatory voter qualification. *Bell*, 367 F.3d at 593. Georgia "is free to take reasonable steps" to ensure registrants are residents. *Id.* at 592.

Plaintiffs respond with a red herring. They claim that under Intervenors' interpretation of the term "nondiscriminatory," Georgia could define "eligible voter[s]" as only "white male[s]." Doc. 228 at 51. But such a definition *would discriminate* based on race and sex. Unlike residency, race and sex are irrelevant to voter qualifications. By contrast, Georgia "has unquestioned power to impose reasonable residence restrictions of the availability of the ballot." *Carrington v. Rash*, 380 U.S. 89, 91 (1965). Because the address a voter lists on her registration form is "relevant" to residency, Georgia's probable cause criteria for elector contests is nondiscriminatory. *Cf. Bell*, 367 F.3d at 593.

B. Georgia law does not conflict with Section 8(d) of the NVRA.

Plaintiffs read Section 8(d) to require a "mandatory notice-and-waiting-period requirement" for "two federal election cycles" even for persons listed on the rolls who are deemed ineligible non-residents after a successful elector contest. Doc. 228 at 46. But the NVRA "protects only 'eligible' voters from unauthorized removal." *Bell*, 367 F.3d at 592. No portion of the NVRA bars "a state from investigating potential" ineligible voters "and removing them on the basis of individualized information" at any time. *Arcia*, 772 F.3d at 1348. To the contrary, the NVRA *requires* voters who are deemed ineligible through challenge

hearings to be removed from the rolls. *Bell*, 367 F.3d at 592. "Eligible voters, at a minimum, are those who qualify" as "residents." *Id.*

Here, Defendants "investigated and examined the residence" of certain potentially ineligible voters through "challenge hearings" and afterwards "concluded" they "were not residents" and "therefore ineligible to vote." *Id.* "As instructed" by the NVRA, Defendants "necessarily removed them from the rolls." *Id.* Because the NVRA "does not" bar "continuing consideration of a voter's residence" and "instead encourages" removing non-residents, *id.*, Georgia's elector contest procedures are not preempted.

Plaintiffs also err by reading Section 8(d) to apply to probable cause findings instead of actual removals. Doc. 228 at 44. The requirements of Section 8(d) are triggered only when a State "remove[s] the name of a registrant from the official list of eligible voters." 52 U.S.C. 20507(d). Plaintiffs admit that a probable cause finding does not automatically "remove the name of a registrant." *Id.* Indeed, Plaintiffs argue only that a probable cause finding "initiate[s] a purge of the voter rolls." Doc. 228 at 51. But a probable cause finding doesn't even do that. All it does is initiate a hearing that might "lead to removal from the rolls," Doc. 228 at 49, but also might not, O.C.G.A. §21-2-230(b), (g)-(i). This Court applied that same reasoning in *Fair Fight Inc. v. True the Vote*, 710 F. Supp. 3d 1237, 1287 (N.D. Ga. 2024). Pointing out that fact isn't "misleading[]." *Contra* Doc. 228 at 44 n.11.

The only time a voter will be removed from the rolls under Georgia's elector contest procedures is when that voter has been deemed "not qualified" to vote. O.C.G.A. §21-2-230(f)-(i). A voter isn't deemed "not qualified" based on the probable cause criteria of §21-2-230. Rather, only if a voter is not a "resident" or fails to meet the other qualifications in §21-2-216 is a voter "not qualified" to vote. Plaintiffs do not contest §21-2-216's qualifications. Doc. 228 at 93-94. The probable cause criteria Plaintiffs challenge is not a "ground for removal." *Husted*, 584 U.S. at 775. Lack of residency is the ground for removal. And removing non-residents from the rolls doesn't violate the NVRA. *Bell*, 367 F.3d at 592. Because a probable cause finding merely initiates an elector contest hearing and is not a "ground for removal," *cf. Husted*, 584 U.S. at 775, there is no Section 8(d) violation. So Counts I and III fail.

C. There is no textual conflict between Georgia law and the NVRA's notice requirements.

Plaintiffs argue that Section 8's notice requirements mandate sending NVRA notices to the "address" of a voter's "choosing." Doc. 228 at 56, 58. But Plaintiffs simply make this language up. The NVRA says nothing about how or where notices must be sent. There is no NVRA requirement to send notices to whatever address a voter wants. Since Plaintiffs have failed to identify any "textual conflict" between Georgia law and the NVRA's notice requirements, *Browning*, 522 F.3d at 1169, the Court should dismiss Count V.

II. The Civil Rights Act does not preempt Georgia's elector contest procedures.

Plaintiffs' final attempt to create a conflict between Georgia and federal law misinterprets both Georgia's Election Code and the Civil Rights Act. But Plaintiffs don't point to a textual conflict or allege racial discrimination. Both deficiencies require dismissal of their Civil Rights Act claim.

A. Georgia law does not conflict with the Civil Rights Act.

Plaintiffs first misinterpret Georgia law. They argue that Georgia's probable cause criteria for elector contests applies different standards to similarly situated individuals. Doc. 228 at 93. But under the statute's criteria, each voter is subject to a voter challenge only if there is evidence that the voter has registered to vote or obtained a homestead exemption in another jurisdiction or is registered at a non-residential address. O.C.G.A. §21-2-230(b). Because the standard is the same for every Georgia voter even though not every voter might meet that standard, there is no Civil Rights Act violation. *See Ballas v. Symm*, 494 F.2d 1167, 1171-72 (5th Cir. 1974) (voter questionnaire did not violate §10101(a)(2)(A) because "[t]he standard for registration is the same").

Plaintiffs also misinterpret the Civil Rights Act. They suggest that state law cannot require information if the information itself is not "a requirement" to register to vote. Doc. 228 at 93. Because a residential address isn't required as a qualification to vote, their argument goes, the lack of a residential address

can't sustain a voter challenge. But Georgia law requires all sorts of different information and evidence that are not themselves qualifications. *See* Doc. 170-1 at 15-16. Plaintiffs have no response to those common requirements, likely because their interpretation of the Civil Rights Act calls each of them into question. The Civil Rights Act does not support this stilted interpretation. *Cf. Davis v. Commonwealth Election Comm'n*, 2014 WL 2111065, at *25 (D.N.M.I. May 20, 2014) (rule that voters must fill out affidavit attesting they are native Islanders and hence eligible to vote did not violate §10101(a)(2)(A)).

Plaintiffs' response misses the distinction between evidence of a qualification and the qualification itself. Unlike age or citizenship, residency can be a frequently changing characteristic. A voter might meet the residency requirement at registration, but a day later change her residence in a manner that would make her ineligible in that jurisdiction. One of the purposes of list-maintenance is to address the unique characteristic of residency. Plaintiffs suggest that the point of registration is the only time a State can examine whether a "person's habitation is fixed, without any present intention of removing" from the State. O.C.G.A §21-2-217(a)(1). But a residential address is good evidence that the voter doesn't have a "present intention" of moving from that address. *Id.* A non-residential address doesn't bring the same assurance. Georgia law doesn't apply different standards "to other individuals." 52 U.S.C.

§10101(a)(2)(A). It simply treats certain evidence (a residential address) as sufficient, and other evidence (a non-residential address) as insufficient.

B. Plaintiffs fail to allege racial discrimination, an essential prerequisite to stating a Civil Rights Act claim.

Plaintiffs' Civil Rights Act claim also fails because Plaintiffs admit they have not alleged racial discrimination. Doc. 228 at 92. Plaintiffs cite a string of district court decisions to suggest this isn't a pleading requirement. *Id.* at 89-90. But those cases are "[a]gainst the great weight" of authority. *Rokita*, 458 F. Supp. 2d at 839 n.106 (refuting district court rulings Plaintiffs cite); *see also United States v. South Dakota*, 491 F. Supp. 1349, 1350 (D.S.D.), *rev'd on other grounds*, 636 F.2d 241 (8th Cir. 1980) (noting "split of authority" on issue but holding "proof of racial discrimination is necessary").

Plaintiffs argue that "[t]he text" of 52 U.S.C. §10101(a)(2)(A) is "written broadly." Doc. 228 at 89. But "construing statutory language is not merely an exercise in ascertaining the outer limits" of a provision's "definitional possibilities" in isolation. *FCC v. AT&T Inc.*, 562 U.S. 397, 407 (2011) (cleaned up). Here, "only one" meaning of the statute "produces" an "effect that is compatible with the rest of the law." *United Sav. Assn. of Tex. v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988). Although §10101(a)(2)(A) is "broadly written," to "argue" that it "applies without regard to race ignores the statute as a whole, its legislative history, and prior judicial construction." *Ballas v. Symm*,

351 F. Supp. 876, 888-89 (S.D. Tex. 1972), *aff'd*, 494 F.2d 1167. Decisions reaching the opposite conclusion failed to read the provision in its full context. *See Vote.Org v. Callanen*, 89 F.4th 459, 486-87 (5th Cir. 2023) (holding that racial animus is not required for a violation of the materiality provision).

Start with the text. The provision applies only when a State is "determining whether any individual is qualified under State law" to "vote." 52 U.S.C. §10101(a)(2)(A). And courts "do not view that provision in isolation." *Cf. Sackett*, 598 U.S. at 674. Rather, its meaning becomes "evident" when "placed in context." *FDA v. Brown & Williamson Tobacco*, 529 U.S. 120, 132 (2000). In context, the term "qualified under State law" shall "not" imply "qualifications more stringent than those" which "violate[] 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." 52 U.S.C. §10101(e). Consequently, a State only "violate[s] subsection (a)" by applying "more stringent" voter qualifications to a person of one "race" than to persons of another "race." *Id.*

Plaintiffs respond that subsection (e) applies when there is a "pattern or practice" Civil Rights Act violation. Doc. 228 at 91. That's true. But Plaintiffs provide no reason why Congress would define the term "qualified under State law" differently for a single Civil Rights Act violation. Subsection (e) establishes "definitions," and there is no good reason why Congress would define a term used multiple times in a statute differently in different subsections. To

the contrary, a "phrase is presumed to bear the same meaning throughout a text unless context requires otherwise." *Regions Bank v. Legal Outsource PA*, 936 F.3d 1184, 1192 (11th Cir. 2019) (cleaned up). Because "suits commenced by the Attorney General" to remedy pattern or practice violations concern only "racial discrimination," it is "logical to conclude" that §10101(a)(2)(A) "applies only to cases of racial discrimination." *Ballas*, 351 F. Supp. at 889. Congress "would not have intended a broader application of the Act to individuals suing to enforce their rights than to the Attorney General." *Id.*

If there were still any doubt that stating a claim under §10101(a)(2)(A) requires alleging racial discrimination, legislative history and Supreme Court gloss dispel it. "As part of the Civil Rights Act of 1964, the provision must be presumed to relate" to racial discrimination, an "assumption" that is "borne out by the House Report of the Bill." *Id.* at 889. Indeed, §10101 was passed "under the authority of the Fifteenth Amendment." *United States v. Mississippi*, 380 U.S. 128, 138 (1965), which authorizes "measures" to "effectuate" the "constitutional prohibition against racial discrimination in voting," *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966). The Supreme Court has referred to Title I of the Civil Rights Act, in which §10101(a)(2)(A) is enshrined, as "outlaw[ing] tactics used to disqualify" black Americans from "voting in federal elections." *Id.* at 313. This "judicial gloss" confirms that "the section is meant to apply solely" to "racial discrimination." *Ballas*, 351 F. Supp. at 889.

Plaintiffs point out that the Eleventh Circuit has noted in passing when interpreting the Civil Rights Act's materiality provision that "Congress in combating specific evils might choose a broader remedy." Doc. 228 at 107 (quoting *Browning*, 522 F.3d at 1173). True, Congress "might" do that. But the statute's "text" is the "starting point" for "discerning congressional intent." *Browning*, 522 F.3d at 1173. And the Civil Rights Act's text shows that a State only "violate[s] subsection (a)" by applying "more stringent" voter qualifications to a person of one "race" than to persons of another "race." 52 U.S.C. §10101(e).

Further, Plaintiffs' interpretation raises "serious constitutional doubts." *Inter Tribal*, 570 U.S. at 17. Plaintiffs argue that there must be statutory ambiguity for this argument to have merit. Doc. 228 at 91. But it has full force when "but for" a more limited "interpretation" of federal law, "the State would be precluded from obtaining information necessary for enforcement" of voter qualifications. *Inter Tribal*, 570 U.S. at 18. Plaintiffs' interpretation of the Civil Rights Act would do so here, depriving Georgia of authority to verify whether its voter qualification of residency is satisfied. "Happily," however, this Court is "spared" the "necessity" of considering the constitutional issues Plaintiffs' interpretation would create so long as it recognizes that pleading racial discrimination is essential to state a §10101 claim. *Cf. id.*

CONCLUSION

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

This 7th day of March, 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 March 7, 2025, I e-filed this document on ECF, which will email everyone requiring service.

/s/ *William Bradley Carver, Sr.*