

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

New Georgia Project, et al., :
Plaintiffs, :
vs. : No. 1:24-cv-03412-SDG
Brad Raffensperger, et al., :
Defendants. :

Georgia State Conference :
of the NAACP, et al., :
Plaintiffs, :
vs. :
Brad Raffensperger, et al., :
Defendants. :

Secure Families Initiative :
and their Members, :
Plaintiff, :
vs. :
Brad Raffensperger, et al., :
Defendants. :

LOWNDES COUNTY BOARD OF ELECTIONS'
REPLY BRIEF IN SUPPORT OF ITS MOTIONS TO DISMISS

Introduction

The Lowndes County Board of Elections files this Reply Brief in response to *Plaintiffs NAACP and People's Agenda's Brief in Opposition to Additional County Defendants' Motions to Dismiss* [Doc. 265] for the limited purposes of responding to Plaintiffs' arguments (1) regarding the traceability requirement for standing, and

(2) that Plaintiffs' Complaint [Doc. 155] states a claim for which relief can be granted.¹

Argument and Authorities

I. Plaintiffs' Complaint does not satisfy the traceability requirement for Plaintiffs to have standing to sue the Lowndes County Board of Elections.

Assuming, *arguendo*, Plaintiffs' Complaint [Doc. 155] alleges injuries in fact, Plaintiffs' Complaint does not satisfy the separate traceability requirement for Plaintiffs to have standing to sue the Lowndes County Board of Elections.²

Plaintiffs' argument regarding traceability boils down to the following. First, they say their Complaint "demonstrates Plaintiffs have been and will be harmed by Defendants' enforcement of [SB 189]." [Doc. 265, p. 1] (emphasis added). Second, Plaintiffs say their Complaint alleges "their injuries are traceable to ... the Additional County Defendants." [Doc. 265, p. 5] (emphasis added).

As to the Lowndes County Board of Elections, this argument fails for three reasons.

¹ Regarding the other issues presented by its *Motion to Dismiss*, the Lowndes County Board of Elections maintains and relies on the arguments and authorities set forth in its *Brief in Support of Motion to Dismiss* [Doc. 256] and also those set forth by the other Boards of Elections which have filed Motions to Dismiss.

² Decisions that a complaint sufficiently alleged an injury in fact, including those cited on page 6 of Plaintiffs' *Brief in Opposition* [Doc. 265], are inapposite to the additional separate traceability requirement which must also be satisfied for standing.

First, contrary to the Supreme Court’s 2024 opinion in *Murthy v. Missouri*, which Plaintiffs ignore, Plaintiffs treat “Defendants” as a monolith. [Doc. 265, p. 1.] They also treat the nine “Additional County Defendants” as a monolith. [Doc. 265, p. 5.]

This they may not do. The Supreme Court has ruled defendants may not be treated as “a monolith.” *Murthy v. Missouri*, 603 U.S. 43, 69 (2024). Standing is not “dispensed in gross.” 603 U.S. at 61. Instead, a plaintiff must demonstrate standing for each claim “against each defendant.” *Id.* This requires a showing that “a particular defendant” engaged in challenged action. *Id.*

Applying these rulings in *Murthy v. Missouri*, Plaintiffs cannot manufacture standing to sue the Lowndes County Board of Elections by including it in a monolith of other defendants. Standing to sue the Lowndes County Board of Elections cannot be based on allegations regarding other defendants. Plaintiffs’ standing to sue the Lowndes County Board of Elections must be analyzed and determined based on Plaintiffs’ allegations regarding the Lowndes County Board of Elections and as if the Lowndes County Board of Elections were the only defendant Plaintiffs sued.

Second, Plaintiffs disregard the precedent established by the Supreme Court and the Eleventh Circuit that for a plaintiff to have standing to sue a defendant, the plaintiff must allege its injuries are “fairly traceable to the challenged action of the defendant.”

In its 2022 opinion in *GALEO*, the Eleventh Circuit held, for a plaintiff to have standing to sue a defendant, the plaintiff must allege the plaintiff's injury is "fairly traceable to the challenged action of the defendant."

Article III of the Constitution limits the subject-matter jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2. "To have a case or controversy, a litigant must establish that he has standing." The "irreducible constitutional minimum" of standing consists of (1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision. These three elements "are not mere pleading requirements but rather an indispensable part of the plaintiff's case."

Ga. Ass'n of Latino Elected Offs., Inc. v. Gwinnett Cnty. Bd. of Registration & Elections ("*GALEO*"), 36 F.4th 1100, 1113 (11th Cir. 2022) (internal citations omitted) (emphasis added).

This ruling in *GALEO* is based on the Supreme Court's 1992 opinion in *Lujan v. Defenders of Wildlife*, in which the Supreme Court ruled for a plaintiff to have standing to sue a defendant, the plaintiff must allege its injury is "fairly traceable to the challenged action of the defendant."

Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an "injury in fact" -- an invasion of a legally protected interest which is (a) concrete and particularized; and (b) "actual or imminent, not 'conjectural' or 'hypothetical'". Second, there must be a causal connection between the injury and the conduct complained of -- the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561 (1992) (internal citations omitted) (emphasis added).

In this case, for the Lowndes County Board of Elections, Plaintiffs' Complaint [Doc 155] does not satisfy the requirement that Plaintiffs' alleged injuries in fact are "fairly traceable to the challenged action of the defendant." Plaintiffs' Complaint does not allege any challenged action of the Lowndes County Board of Elections and therefore does not allege Plaintiffs' alleged injuries are fairly traceable to challenged action of the Lowndes County Board of Elections.

Third, in *Murthy v. Missouri*, the plaintiff did not point to any past harm traceable to any action of the defendants. 603 U.S. at 70. Because of this failure, the plaintiff could only rely on the speculative possibility of future harm traceable to action of the defendants. *Id.* The Supreme Court held a plaintiff cannot satisfy the traceability requirement with such conjecture. *Id.*

Here, Plaintiffs have not alleged any past harm traceable to any challenged action of the Lowndes County Board of Elections. Because of this failure, Plaintiffs can only implicitly rely on the speculative possibility of future harm traceable to action of the Lowndes County Board of Elections. Applying the Supreme Court's opinion in *Murthy v. Missouri*, this is conjecture which does not satisfy the traceability requirement for Plaintiffs to have standing to sue the Lowndes County Board of Elections.

II. Plaintiffs' Complaint does not state a claim upon which relief can be granted against the Lowndes County Board of Elections.

Plaintiffs argue their Complaint [Doc. 155] “adequately stated claims that Sections 4 and 5 of SB 189 both violate, and are preempted by, Sections 8(b) and 8(d) of the NVRA.” [Doc. 265, p. 5.] This is not responsive to the Lowndes County Board of Elections’ motion to dismiss under Rule 12(b)(6). [Doc. 256, p. 7]

Plaintiff’s Complaint does not include any allegation that the Lowndes County Board of Elections has acted unlawfully. Plaintiffs’ argument that they have alleged certain sections of SB 189 violate certain sections of the NVRA is not sufficient factual matter that the Lowndes County Board of Elections has acted or will act unlawfully and therefore does not state a claim upon which relief can be granted against the Lowndes County Board of Elections. *GALEO*, 36 F.4th at 1113.

Conclusion

For these reasons, and those previously stated in support of the Lowndes County Board of Elections’ Motion to Dismiss [Doc. 256], and those stated by the other Boards of Elections incorporated by reference, the Court should dismiss Plaintiffs’ Complaint [Doc. 155] as to the Lowndes County Board of Elections based on Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted this 21st day of April, 2025.

/s/ Walter G. Elliott

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Certificate of Compliance

I certify that the foregoing has been prepared in Times New Roman 14, a font and type selection approved by the Court in L.R. 5.1(C).

/s/ Walter G. Elliott

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Certificate of Service

I certify that on April 21, 2025, I electronically filed the foregoing *Lowndes County Board of Elections' Reply Brief in Support of its Motion to Dismiss* with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record in this matter.

/s/ Walter G. Elliott

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