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

NEW GEORGIA PROJECT, et al. Plaintiffs, v. BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, et al. Defendants.	)	CIVIL ACTION FILE NO.: 1:24-CV-03412-SDG (Consolidated with 1:24-CV-04287-SDG and 1:24-CV-04659-SDG)

REPLY BRIEF IN SUPPORT OF DEKALB DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED AND CONSOLIDATED COMPLAINT

NOW COME the DEKALB COUNTY BOARD OF REGISTRATION AND ELECTIONS (the "**BRE**"); VASU ABHIRAMAN, in his official capacity as a member of the BRE ("**Abhiraman**"); NANCY JESTER, in her official capacity as a member of the BRE ("**Jester**"); ANTHONY LEWIS, in his official capacity as a member of the BRE ("**Lewis**"); SUSAN MOTTER, in her official capacity as a member of the BRE ("**Motter**"); and KARLI SWIFT, in her official capacity as a member of the BRE ("**Swift**," together with BRE, Abhiraman, Jester, Lewis, and Motter, the "**DeKalb Defendants**") and, pursuant to LR 7.1(C), file this reply brief in support of their Motion to Dismiss Plaintiffs'

Amended and Consolidated Complaint showing this honorable court the following:

INTRODUCTION

The brief in opposition to the DeKalb Defendants' Motion to Dismiss filed by the Georgia State Conference of the NAACP (the "**GANAACP**") and the Georgia Coalition for the People's Agenda ("**GCPA**," together with GANAACP the "**Plaintiffs**") [Doc. 265] (the "**Response**") fails to address the deficiencies of Plaintiffs' Amended Complaint [Doc. 155] (the "**Amended Complaint**"). The Response does not address the issues raised by the DeKalb Defendants. Specifically, Plaintiffs have failed to point the Court to any specific allegations in the Amended Complaint regarding the conduct of the DeKalb Defendants upon which this Court could grant any relief. Furthermore, Plaintiffs failed to confirm its complaint to the current Eleventh Circuit standards on shotgun pleadings. Because Plaintiffs have failed to address these deficiencies of the Amended Complaint, the DeKalb Defendants should be dismissed from this Civil Action.

ARGUMENTS AND CITATIONS OF AUTHORITY

I. Plaintiffs have failed to allege any facts regarding the DeKalb Defendants.

The Plaintiffs fail to point to any allegations in the Amended Complaint regarding the conduct of the DeKalb Defendants. In fact, in the Response,

Plaintiffs point to paragraph 170 of the Amended Complaint and pages 24-31 of their Consolidated Brief in Opposition to Defendants' and Intervenors' Motion to Dismiss [Doc. 228] (the "**Consolidated Brief**"). The referenced pages of the Consolidated Brief refer to paragraphs 41, 42, 45, 47, 56, 57, 59, 71-73, 209, 210, 230-240, and 305 of the Amended Complaint. None of these paragraphs have any reference to DeKalb County or the DeKalb Defendants. In fact, the only paragraphs of the Amended Complaint that allege any actions by any county are the following:

- Ben Hill County – not a defendant in this case – Paragraph 166;
- Muscogee County – not a defendant in this case – Paragraph 166;
- Walton County – not a defendant in this case – Paragraphs 225 and 303;
- Chattooga County – not a defendant in this case – Paragraph 235;
- Forsyth County – Paragraphs 4, 170, 180, 228, and 274;
- Gwinnett County – Paragraphs 4, 171, 172, 175, 179, 239 and 274;
- Spalding County – Paragraphs 4, 174, and 274;
- Chatham County – Paragraphs 4, 177, 178, 200, 223 and 274;
- Fulton County – Paragraphs 200, 234, and 270;
- Macon-Bibb County – Paragraphs 200, 229-233, 235, and 269;
- Richmond County – Paragraph 227; and
- Cobb County – Paragraph 238.

Not a single paragraph of the Amended Complaint makes any allegations regarding the conduct of the DeKalb Defendants. Plaintiffs have failed to point this Court to any alleged conduct by the DeKalb Defendants that has violated or would violate the NVRA. It is undisputed that the word "DeKalb" only appears seven times throughout the entirety of the 142-page Amended Complaint.[1] There are no specific allegations regarding the DeKalb Defendants in the Amended Complaint. Plaintiffs do not dispute these facts. Because Plaintiffs have not alleged the DeKalb Defendants have engaged in any specific conduct that is actionable, Plaintiffs have failed to state a claim against the DeKalb Defendants, and they should be dismissed from this Civil Action.

II. The Amended Complaint is an impermissible shotgun pleading.

Instead of correcting its shotgun pleading, Plaintiffs double down on it and argue is it not a shotgun pleading. However, a short examination of the relevant "incorporation" paragraphs shows that it is, in fact, a quintessential shotgun pleading. The Amended Complaint is the most common type of shotgun pleading because it contains multiple counts and "each count adopts the allegations of all preceding counts, causing each successive count to carry

[1] The term "DeKalb" appears a total of eleven times throughout the Amended Complaint if you include its attachments.

all that came before and the last count to be a combination of the entire complaint." *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1321 (11th Cir. 2015). Plaintiffs simply want to ignore the incorporating paragraphs of the Amended Compliant (paragraphs 249, 261, 271, 276, 280, 288, 298, 311, 321, 333, 350, and 360). These paragraphs "re-allege and incorporate all relevant allegations contained in the paragraphs above."

Watts v. City of Port St. Lucie, Fla., No. 2:15-CV-14192, 2015 WL 7736532, at *5 (S.D. Fla. Nov. 30, 2015), the case cited by Plaintiffs for the proposition that reincorporating paragraphs for convenience is proper if "the Court is able to ascertain which paragraphs are relevant to each of the claims" is inapposite for the case at bar. The Court in *Watts* stated:

> [t]his type of pleading is frowned upon because "in ruling on the sufficiency of a claim, the trial court must sift out the irrelevancies, a task that can be quite onerous." *[Cit.]*. Although some counts of Plaintiff's Complaint do incorporate paragraphs in previous counts by reference, it is not an impermissible "shotgun pleading," because it does so only for convenience, and the Court is able to ascertain which paragraphs are relevant to each of the claims.

Id. (quoting *Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1295 (11th Cir. 2002)). However, what Plaintiffs fail to mention is the complaint in *Watts* was 12 pages and 71 paragraphs long. Complaint, Doc. 1, *Watts v. City of Port St. Lucie, Fla.*, No. 2:15-CV-14192 (S.D. Fla. May 28, 2015). Moreover, Plaintiffs fail to mention that the plaintiff in *Watts* did

not reincorporate all preceding "relevant" paragraphs in each count like Plaintiffs do in the case at bar. In fact, in counts II – IV, the plaintiff in *Watts* only incorporated certain factual allegations (but not all allegations) from count I (*e.g.*, paragraphs 29, 39, and 47 state the plaintiff "realleges Paragraphs 1 through 23, and states additionally or alternatively:") and in counts V and VI the plaintiff only incorporated certain factual allegations from counts I and IV (*e.g.*, paragraphs 56 and 64 state the plaintiff – "realleges Paragraphs 1 through 23 and 48 through 49; and, states additionally or alternatively:"). *Id.* [Doc. 1 at ¶¶ 29, 39, 47, 56, and 64]. Under the Eleventh Circuit test for shotgun pleadings, the complaint in the *Watts* case was not a shotgun pleading.

In this case, however, the Amended Complaint is 142 pages and 369 paragraphs long. Additionally, the leading paragraph on each count realleges and reincorporates all "relevant" allegations of every preceding paragraph, leaving the Court and defense counsel the unenviable task of determining not only what specific paragraphs are being referenced but which ones are "relevant" to each count. As an Eleventh Circuit concurrence, published as recently as last week, stated

> shotgun pleadings reward imprecision and strategic vagueness. They flout the basic demands of Rules 8 and 10. . . . And a district court confronted with a shotgun complaint should *sua sponte* strike it—early and firmly. We have said it before, and we will say it

> again: shotgun pleadings harm courts 'by impeding [their] ability to administer justice.' [Cit.] Striking shotgun complaints at the outset spares everyone wasted time, money, and motion practice.

Vargas v. Lincare, Inc., No. 24-11080, 2025 WL 1122196, at *9 (11th Cir. Apr. 16, 2025) (citations omitted) (Tjoflat, J., concurring). Because the Amended Complaint is a shotgun pleading under binding Eleventh Circuit precedent, this Court should dismiss the Amended Complaint.

CONCLUSION

For the foregoing reasons and as argued in the Memorandum of Law in Support of DeKalb Defendants' Motion to Dismiss Plaintiffs' Amended and Consolidated Complaint [Doc. 258-1], Plaintiffs' Amended Complaint against the DeKalb Defendants should be dismissed.

CERTIFICATE OF COMPLIANCE

In accordance with Civil Local Rule 7.1(D), I hereby certify that the foregoing has been prepared using 13 point Century Schoolbook font as approved by the Court in Civil Local Rule 5.1(C).

Respectfully submitted, this 21st day of April 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2025, I electronically filed the **REPLY BRIEF IN SUPPORT OF DEKALB DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED AND CONSOLIDATED COMPLAINT** using the Court's Electronic Case Filing program which sends a notice of the above-listed documents and an accompanying link to the documents to the parties who have appeared in this case under the Court's Electronic Case Filing program.

This 21st day of April 2025.

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