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

NEW GEORGIA PROJECT, *et. al.*,	:	
	:	
Plaintiffs,	:	Civil Action No.
	:	1:24-cv-03412-SDG
vs.	:	
	:	
BRAD RAFFENSPERGER, *et. al.*,	:	
	:	
Defendants.	:	
	:	

COLUMBIA COUNTY DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT (Doc. 282)

This Motion to Dismiss asks a fundamental threshold question:

What is the statutory basis for Plaintiffs' assertion that Congress intended to create a private right of action against counties in the NVRA?

The Columbia County Defendants do not believe there is one for the reasons stated in their Motion to Dismiss (Doc. 282, *passim*). Plaintiffs offer three basic responses, none of which are persuasive.

First, Plaintiffs argue that other courts have allowed private NVRA claims against local governmental agents and so this Court should as well. (Doc. 304 at 44, 46). As the Columbia County Defendants freely acknowledged in their Motion to Dismiss, there are a number of cases which start with the presumption that such claims are cognizable and have analyzed NVRA claims solely based upon the

traceability of injury or causation. (Doc. 282 at fn.3). Each of these holdings beg the prefatory question that binding precedent imposes however: *upon what statutory basis are these claims even authorized by Congress in the first place?*

The United States Supreme Court has made clear that the touchstone of statutory interpretation is what Congress intended – not what others may have allowed without analysis. "Raising up causes of action where a statute has not created them may be a proper function for common-law courts, but not for federal tribunals." *Alexander v. Sandoval*, 532 U.S. 275, 286, 121 S. Ct. 1151, 149 L. Ed. 2d 517 (2001). Absent a finding by this Court that Congress intended to create a private right of action in the NVRA against a county, "a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute." See *id.* Here, *none* of the foreign district court cases cited by Plaintiffs -- nor any case found by the Columbia County Defendants -- attempt to analyze the statutory authorization of such claims as directed by this binding Supreme Court precedent. Hence the good-faith assertion by the Columbia County Defendants that this is an issue of first impression.

Philosopher Bertrand Russell was once credited for observing that "in all affairs it's a healthy thing now and then to hang a question mark on the things you have long taken for granted." The Columbia County Defendants squarely pose the threshold question of whether or not Congress authorized private rights of action

against counties in the NVRA. The question now has been joined by Plaintiffs in their Response and it is ripe for judicial determination. If the Court finds that the text of the NVRA establishes Congressional intent to authorize a private right of action against counties, then of course the Columbia County Defendants should lose this part of their argument. If the Court instead agrees with the Columbia County Defendants that the text and context of the Act does not authorize this private right of action, then the Motion to Dismiss should be granted on this basis (among others).

Second, Plaintiffs argue that recent State law diffused certain election responsibilities to counties under Senate Bill 189, and imply that this is somehow relevant to determining what Congress intended in its long-prior adoption of the NVRA in 1993. (Doc. 304 at 44-45). Despite any argument that Plaintiffs may make in regard to recent Georgia state election laws however, this fundamental fact remains: *the Secretary of State still maintains the codified obligation under Georgia law to "coordinate the responsibilities of this state under the [NVRA] as required by 52 U.S.C. Section 20509" despite the subsequent adoption of Senate Bill 189*. See O.C.G.A. § 21-2-210. Our Legislature did not alter or repeal this legal mandate as part of Senate Bill 189, and Plaintiffs fail to address or even reference this statute in its 97-page Response Brief. Plaintiffs instead seek to create a problem that the Georgia General Assembly already averted.

Third, Plaintiffs argue that their claims against counties are permitted – or at

least not prohibited – by the text of the Act. (Doc. 304 at 45). The "private right of action" provision of the NVRA is as follows in relevant part:

> (b) Private right of action.
>
> (1) A person who is aggrieved by a violation of this Act may provide written notice of the violation to the chief election official of the State involved.
>
> (2) If the violation is not corrected within 90 days after receipt of a notice under paragraph (1) . . . , the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.

52 U.S.C. § 20510.

Plaintiffs seek to divorce the two adjacent subsections of this provision to argue that while Congress expressly provided a pre-suit notice of violation requirement for the chief election officer in subsection (b)(1), it did not reference the chief election officer again in subsection (b)(2). (Doc. 304 at 45). Therefore, Plaintiffs infer, there must not be a limitation in subsection (b)(2) as to who can be sued. This is incorrect for the following reasons:

a. Plaintiffs' interpretation ignores the fact that (b)(1) and (b)(2) refer to the same violation and thus are to be read together. Subsection (b)(1) requires that written notice of "the violation" be sent to the chief election official of the State prior to suit. Subsection (b)(2) then authorizes a private action "with respect to the violation" referenced in the subsection (b)(1) notice, if "the violation" is not corrected. Consistent reference to "the violation" in both subsections tie the two

provisions together and prevents the disassociation which Plaintiffs wish to suggest, because the two subdivisions relate to a single item – "the" violation which Plaintiffs required "the chief election official of the State" to remedy.

The Columbia County Defendants thus believe that the Court must interpret these two subsections *in pari materia*: that pre-suit notice of "the violation" is required to be given to the chief election officer under subsection (b)(1), and then a private right of action is authorized against that chief election officer under subsection (b)(2) if "the violation" referenced in the preceding subsection is not cured by that officer. After all, "[r]equiring would-be plaintiffs to send notice to their chief election official about ongoing NVRA violations would hardly make sense if that official did not have the authority to remedy NVRA violations." *Harkless v. Brunner*, 545 F.3d 445, 453 (6th Cir. 2008).

b. Plaintiffs' interpretation vitiates Congressional intent to require pre-suit notice to a putative defendant. "The apparent purpose of the notice provision is to allow those violating the NVRA the opportunity to attempt compliance with its mandates before facing litigation." *Ga. State Conf. of the NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1335 (N.D. Ga. 2012). If Congress intended to allow suits against counties, it stands to reason that Congress would have required pre-suit notices to be sent to counties in subsection (b)(1) as well in order to grant them the same statutorily-protected opportunity to voluntarily comply. Congress did not mandate

such notice, and Defendants do not explain this discrepancy. Thus while the interpretation of the Columbia County Defendants supports the Congressional purpose of requiring statutory notice to the (sole) proper defendant before suit, Plaintiffs' interpretation significantly undermines this purpose and makes the notice requirement ineffectual as to all but one putative defendant per State.

c. Plaintiffs' interpretation subverts Congressional intent to centralize responsibility for NVRA compliance. Congress required each State to designate a single state officer with statutory responsibility for NVRA compliance. See 52 U.S.C. § 20509. The Act "centralizes responsibility in the state and in the chief elections officer, who is the state's stand-in." *Scott v. Schedler*, 771 F.3d. 831, 839 (5th Cir. 2014) The text of the NVRA thus "reflects a policy choice [by Congress] that responsibility should be centralized rather than fragmented." *Id.* While the interpretation of the Columbia County Defendants is in harmony with this policy choice, Plaintiffs' read renders it ineffectual by allowing private actions against an untold number of local and state officials with some role in the election process.

d. Plaintiffs' interpretation thwarts Congressional intent to provide full and efficient relief to injured parties. Presumably, when Congress provided a private right of action under the NVRA, it contemplated that the Act would afford efficient and effective relief to injured parties. The interpretation urged by the Columbia County Defendants does exactly this, allowing for an action against a single

defendant under subsection (b)(2) who is the "stand-in" for the State. See *Scott*, 771 at 839. As a statewide actor with statutory obligations under 52 U.S.C. § 20509 and O.C.G.A § 21-2-210, that single defendant then is required to coordinate compliance with a state-wide injunction if granted and can appropriately defend declaratory judgment actions against state law enactments such as Senate Bill 189.

Plaintiffs, by contrast, urge an interpretation of the NVRA that requires them here to sue a hodgepodge of diverse counties and local actors. In this case alone, and if the undersigned counted correctly, *the Plaintiffs named a total of 94 actual defendants* to comprise their selected "Seventeen County Board Member Defendants." (Doc. 276 at ¶¶ 87-104). Not only is this staggeringly more expensive for all concerned, there is no guarantee that this Court can even give full statewide injunctive or declaratory relief when only 10.7% of counties in Georgia are represented in these claims. Taken to its logical conclusion, under Plaintiffs' interpretation they must name and serve every county board of elections in the State of Georgia – and then each and every individual member of their board of elections -- to be sure that complete relief is available to them.[1]

Plaintiffs fail to explain their basis for believing that Congress intended such

[1] If the ratio of actual defendants (94) to counties (17) here is representative of the State at large, this equates to a total of approximately 879 separate defendants needed to ensure that all 159 counties are subject to any ordered relief. There is no evidence that Congress intended to foist the massive costs and inefficiencies of such litigation on plaintiffs, the courts, or on the local taxpayers presumably funding the defense of most county defendants.

an unwieldly strain on judicial economy, litigant resources, and limited county (public) resources. Surely Congress intended to make it easier for injured parties to get complete relief in this Act, not harder and more expensive. Plaintiffs' interpretation of the private right of action provision contained in the NVRA thus should be rejected.

WHEREFORE, the Motion to Dismiss filed by the Columbia County Defendants (Doc. 282) should be granted for these reasons as well as the others stated or incorporated in said Motion to Dismiss.

Respectfully submitted this 28th day of May, 2025.

/s/ William J. Keogh, III
William J. Keogh, III
Georgia Bar No. 415781
Sydney K. Parish
Georgia Bar. No. 224821
Attorneys for Columbia County

Hull Barrett, PC
801 Broad Street, Suite 7
Augusta, Georgia 30901
wkeogh@hullbarrett.com
sparish@hullbarrett.com

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1 AND CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

I further certify that I have this day electronically filed this Reply Brief in Support of the Columbia County Defendants' Motion to Dismiss with the Clerk of Court using the CM/ECF system which will automatically send email notification to all attorneys of record.

Respectfully submitted this 28th day of May, 2025.

/s/ William J. Keogh, III
William J. Keogh, III
Georgia Bar No. 415781
Attorney for Columbia County

Hull Barrett, PC
801 Broad Street, Suite 7
Augusta, Georgia 30901
wkeogh@hullbarrett.com